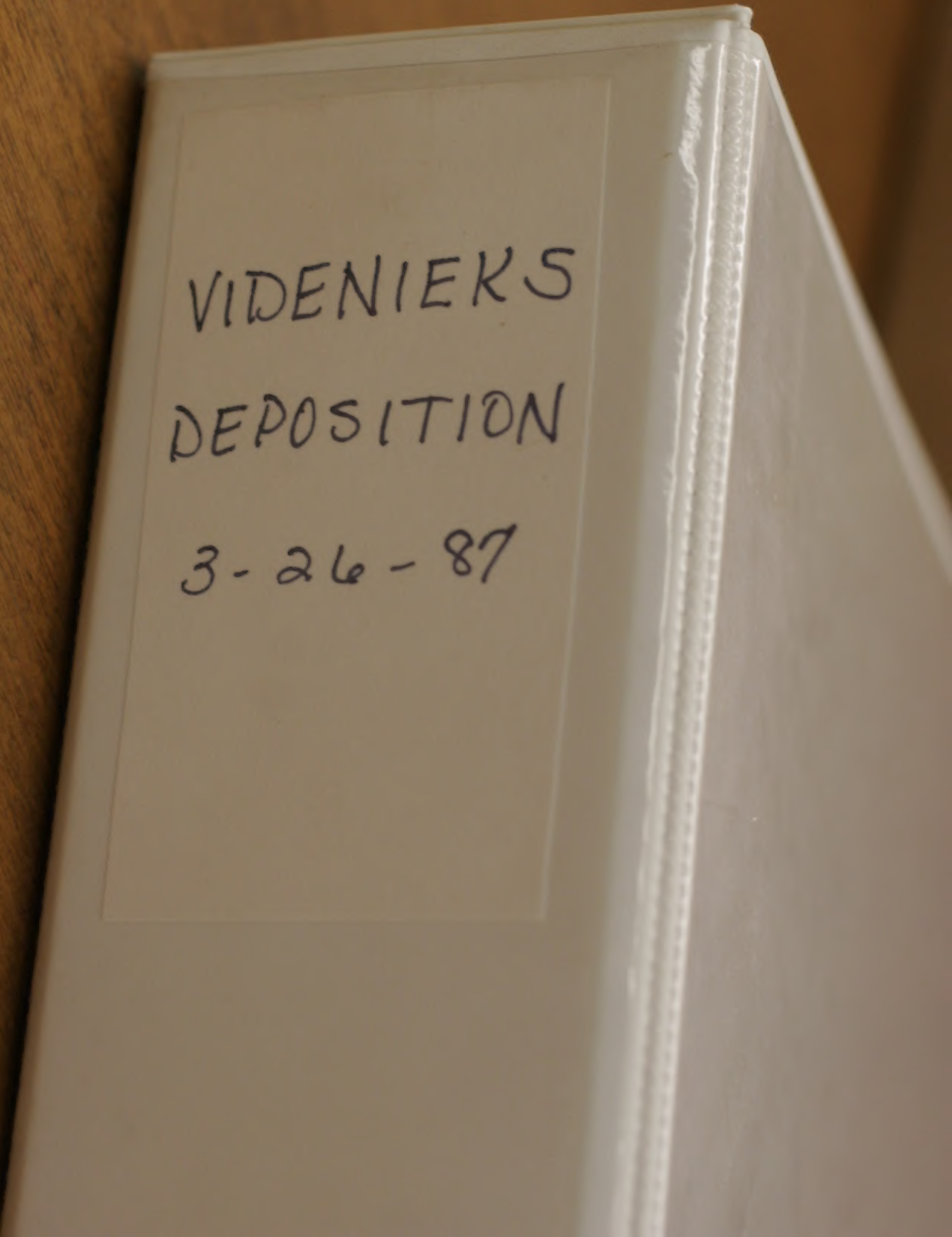

VIDENIEKS
DEPOSITION
3-26-87

NON CONFIDENTIAL
VERSION

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re

INSLAW, INC.,

Debtor.

Case No. 85-00070
(Chapter 11)

NON CONFIDE
VERSION

INSLAW, INC.,

Plaintiff,

v.

UNITED STATES OF AMERICA
AND THE UNITED STATES
DEPARTMENT OF JUSTICE,

Defendants.

Adversary Proceeding
No. 86-0069

~~IN CAMERA~~
~~UNDER SEAL~~
~~NOT PUBLIC~~

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Counts I, II and III of the Complaint)

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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF MARYLAND

IN RE:)
INSLAW, INC.,) Case No. 85-00070
Debtor.) Chapter 11

- - - - -

The deposition of PETER VIDENIEKS, was taken on Thursday, March 26, 1987, commencing at 4:03 p.m. at the office of Docter, Docter & Salus, 1325 G Street, N.W., Suite 700, Washington, D.C., before Debra L. Grothmann, Registered Professional Reporter and Notary Public.

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APPEARANCES

ON BEHALF OF THE UNITED STATES OF AMERICA AND THE DEPARTMENT OF JUSTICE:

DEAN COOPER, Esquire
Department of Justice, Civil Division
550 11th Street, N.W., Room 1212
Washington, D.C. 20004

ON BEHALF OF THE DEBTOR (INSLAW, INC.):

MICHAEL J. LIGHTFOOT, Esquire
O'Neill & Lysaght
2115 Main Street
Santa Monica, California 90405

(Index appears following the transcript.)

PROCEEDINGS

- - - - -

Whereupon --

PETER VIDENIEKS

a witness, called for examination, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. LIGHTFOOT:

Q. Mr. Videnieks, my name is Michael Lightfoot. I'm an attorney representing INSLAW, the debtor in this bankruptcy proceeding, and Mr. Cooper, your attorney, is in the room. This is a deposition that is taking place pursuant to notice and subpoena. You were subpoenaed, were you, to be here today at four o'clock?

A. Right, right.

MR. COOPER: Let me just make an objection for the record. Mr. Videnieks' deposition notice will reflect the date on which it was served. My recollection is it was on March 23, today being only three days later. The United States and Department of Justice objects to the unusually short notice for the deposition notice. The local Rule 16 C requires seven days' notice. As a result of the short notice period, it's prejudiced to the government by permitting no meaningful opportunity to prepare Mr. Videnieks for his deposition.

BY MR. LIGHTFOOT:

Q. Mr. Videnieks, for whom are you presently employed?

A. Department of Justice.

Q. What is your present position?

A. Contracting officer.

Q. Are you employed in a particular division in the Justice Department?

A. Yes, Justice Management Division.

Q. And you work under -- which Assistant Attorney General?

A. It is right now Harry Flickinger. He's acting.

Q. And which division is that?

A. Justice Management Division.

Q. How long have you been so employed?

A. About six years.

Q. What are your present duties there?

A. To basically award and administer contracts.

Q. Now, calling your attention back to 1982. Did you become familiar with a company by the name of INSLAW, Incorporated?

A. Yes, sir.

Q. And tell us the circumstances under which you became familiar with that entity.

A. It was my -- one of my first assignments at the Department of Justice.

Q. Now, when you say it was one of your first assignments, by that do you mean you were assigned to administer the --

A. Oh, no. I was assigned to conduct a competitive procurement which was the result of a pilot project under which I believe INSLAW and two other contractors were pilot contractors.

Q. All right. And you worked with other individuals in the Justice Management Division at that time with regard to the INSLAW contract?

A. Yes. Well, shall we refer to it as INSLAW contract or the procurement which resulted into a contract to INSLAW?

Q. All right. Well, whatever you want to call it, whichever is more appropriate.

A. On the procurement.

Q. On the procurement. So you worked on the procurement of that contract?

A. Yes.

Q. And when did it become a contract with the Justice Department?

A. I believe the award was in February of '82, to the best of my recollection.

Q. And after the contract was awarded, did you continue to work on INSLAW?

A. I was charged with administering that contract.

Q. And what did those duties entail?

A. To monitor contract performance from a procurement standpoint to -- basically that's it.

Q. If you could be a little more specific. I don't understand what you mean by that. In layman's language, what does that mean?

A. To monitor the contract means basically to issue any necessary modifications, send any required correspondence.

Q. And did you report to a particular individual?

A. Yes.

Q. Who was that?

A. I think initially it was Patricia Rudd, R U D D. Later on it became -- the individual was Kamal Rahal.

Q. How do you spell that?

A. K A M A L, R H A L (sic).

Q. R A H L?

A. R H A L. And then subsequently Paul Turnau was in the picture. There was a -- three of them, T U R N A U.

Q. And did all of these individuals work in the Justice Management Division?

A. Yes.

Q. Now, as you worked in the Justice Management Division on the INSLAW contract, did you have regular dealings with one or more individuals at INSLAW?

A. Yes.

Q. And let's just start in '83. Who did you have regular contacts with at INSLAW in 1983?

A. My memory is not good enough to where I can partition my contacts off by year. I remember -- that was the initial -- in '83, I may have -- Kelley, Jim Kelley.

Q. And what was his position at INSLAW at that time?

A. He was general counsel but acted as contract administrator with -- I can't recall the gentleman's name.

Q. Okay.

A. John Gizarelli was program manager.

Q. And did you continue to work with those two individuals at INSLAW in 1984?

A. At one point, whether it was '84 -- at some later point, Kelley left INSLAW and his job was taken over by Roberta McLennin.

Q. And did you then work with her?

A. Yes.

Q. And did you continue to work with Mr.

Gizarelli in 1984?

A. Again I don't know which year it was. Gizarelli at some later time, it may have been '85, left INSLAW and his functions were taken over by several individuals in succession.

Q. I see. Now, at some point, did you -- were you detailed away from the Justice Management Division to the executive office of U.S. Attorneys?

A. I was always on the Justice Management Division's payroll, always reported to individuals -- one of the three individuals which I named.

Q. Well, physically did your office move to the offices of the executive office of U.S. Attorneys?

A. No. At one point I had two offices.

Q. And where were they located?

A. One with the executive office of U.S. Attorneys, another one with the procurement staff.

Q. When did that happen that you first had those two offices?

A. I can't recall specifically, but it was probably in '84, that's about the best I can recall.

Q. And how long did that arrangement last?

A. I would guess more than a year.

Q. Can you give me an approximate date -- well, at some point in '85 -- I gather it was a three-year contract?

A. Yes.

Q. I believe sometime in 1985, I believe March 17, 1985, the contract terminated, ended?

A. The contract -- I believe that's true.

Q. And did you maintain these two offices until the contract expired in March of 1985?

A. No.

Q. When did you cease using two offices?

A. I can't recall.

Q. It was sometime before March of '85, though?

A. Yes.

Q. And when you ceased using those two offices, did you just then return to your one office at Justice Management?

A. Yes.

Q. And you quit the offices in the executive office of U.S. Attorneys?

A. Yes.

Q. Let me ask you this, Mr. Videnieks, and this may be a little difficult. Do you recall that you kept those two offices until sometime in 1985 or would it have been 1984 when you went back to Justice Management Division?

A. I cannot recall.

Q. When you had an office, one of the two offices at the executive office of U.S. Attorneys, did you report to anybody at the executive office -- and I'm just going to call it executive offices from now on?

A. EOUSA, whatever. No.

Q. Did you work with anyone in particular when you had your office up there?

A. I had my own individual office.

Q. All right. But is it fair to say that you now had this second office because it was important that you have dealings with the executive office?

A. No.

Q. Why did you -- why did you maintain two offices, then?

A. Geographic reasons. The EOUSA office is on Connecticut, upper, Northwest. We are downtown.

Q. Where is the Justice Management Division?

A. The main justice is on 10th and Constitution, N.W., so it's a lengthy subway ride, and basically it was a convenience measure.

Q. Because it was more convenient for you to work at EOUSA?

A. Definitely there were times when it was, sure.

Q. And why was it more convenient for you to work at EOUSA?

A. Approximately to the technical -- Contracting Officers Technical Representative, the COTR.

Q. COTR. And who was the COTR during this period of time that you dealt with?

A. Michael Snyder.

Q. Would it be fair to say, then, that you had regular business with Mr. Snyder during the time that you administered the INSLAW contract?

A. Yes.

Q. What was Mr. Snyder's title at the executive office?

A. I believe his title was, to the best of my recollection, attorney advisor and he functioned as the -- what we call a COTR.

Q. And did he report to Mr. Brewer?

A. I believe -- when I say I believe, I'm trying to remember, it was Jack Rugh.

Q. Jack Rugh. And did Mr. Rugh --

A. And there was a lady, lady assistant manager over there for a short period of time, Karen Krug, K R U G. He also reported to a Karen Krug.

Q. And did Mr. Snyder report to C. Madison Brewer?

A. Ultimately, yes.

Q. And Mr. Brewer, in turn, reported to Tyson?

A. I believe there's someone in there.

Q. During that period of time Tyson was the director of the executive office, wasn't he?

A. Right.

Q. Did you have contact during the period of time --

A. Excuse me.

Q. Did you have daily contact with Mr. Snyder with regard to this contract during the period of time that you had an office up there?

A. Not every day. But in general, yes.

(Discussion off the record.)

BY MR. LIGHTFOOT:

Q. Did you have contact with Mr. Rugh on a regular basis while you were -- your office was up there?

A. Yes.

Q. More so than with Mr. Snyder?

A. No.

Q. And for the period of time that you had these two offices, did you spend more time at the executive offices than you did at Justice Administration -- Justice Management Division?

A. At one time, yes. But it varied. I had other assignments, also, so it was depending upon --

Q. What was the longest period of time that you would go to the offices -- on a regular basis to the executive office rather than Justice Management?

A. Excuse me.

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A. At one time, yes. But it varied. I had other assignments, also, so it was depending upon --

Q. What was the longest period of time that you would go to the offices -- on a regular basis to the executive office rather than Justice Management?

A. Day and a half.

Q. Day and a half?

A. I was -- most of the time I reported in in the morning at Justice Management Division to check my other duties, and then I would go over to the EOUSA.

Q. During the three-year time period that the contract was in existence, the INSLAW contract, how much of your day did that take up on a regular basis?

A. I can't recall. It was a -- I would say it was my largest assignment, but frequently there were urgent other procurements which took more time, especially toward the later years, and administering of the INSLAW contract became secondary, significant -- almost secondary.

Q. During this three-year period, was that your major assignment, however, the INSLAW contract?

A. Yes.

Q. Okay. Now, let me call your attention, if I could, Mr. Videnieks, to -- we can mark this as Videnieks Number 1.

(Videnieks Deposition Exhibit Number 1 was marked for identification.)

BY MR. LIGHTFOOT:

Q. And I ask that you take a look at that.

I'm going to ask you to look at this letter, not necessarily read all of its contents. All I'm trying to do is ask you whether or not you received that letter? It's --

A. I have my wrong glasses with me, but I received this letter.

Q. You did receive it?

A. As far as I can tell without reading the whole thing.

Q. And I'm not going to ask you anything about its contents but take your time to make sure that that is a letter received from the law firm of Pettit and Martin with respect to the INSLAW contract.

A. It appears to be a letter that I received.

Q. And do you recall what you did -- did you forward this letter on to someone else after you received it?

A. I believe I or someone else in procurement answered it after discussing it.

Q. Do you recall with whom you discussed this letter?

A. I believe I discussed it with Mr. Rahal.

Q. If you'll notice on the last page of the letter, there's a carbon copy to Mr. Rahal?

A. I'm pretty sure it was also Bill Snider.

Q. And that's different than Michael Snyder?

A. Right, he was an attorney. He was the Administrative Counsel, DOJ.

Q. And do you recall discussing with anybody in the executive office of U.S. Attorneys?

A. Yes, I would have discussed it with Mike Snyder and Jack Rugh and possibly Brick Brewer.

Q. Okay. The next document, Mr. Videnieks, is a -- is one that appears to have your name on it and it's dated February 17, 1983, and we'll mark this as Videnieks Number 2. And this is dated seven days after the letter which is marked as Videnieks Number 1.

(Videnieks Deposition Exhibits Numbers 2-4 were marked for identification.)

BY MR. LIGHTFOOT:

Q. So that we're clear now, Mr. Videnieks -- they're all dated February 17. 2 is a memo from you to W. J. Snider, 3 is one from you to C. M. Brewer, and 4 is from you to Guy K. Zimmerman, and my sole question to each of those, 2, 3 and 4, is whether or not you're familiar with those and that you did, in fact, author them and send them on to the person indicated?

A. Yes.

Q. With respect to 2, is that true?

A. Yes.

Q. With respect to 3, is that true?

A. Yes.

Q. And with respect to 4, is that true?

A. Yes.

Q. Mr. Videnieks, I now want to call your attention to the month of February of 1985. The record indicates that a Chapter 11 bankruptcy petition was filed by INSLAW, Incorporated, on February 7, 1985. Have you at some time become familiar with the fact that such a petition had been filed in bankruptcy court here in Washington, D.C., actually in Alexandria?

A. Yes.

Q. When did you first become aware of the fact that INSLAW had filed such a bankruptcy petition?

A. Around that time. I can't tell specifically when it was, I really can't.

Q. Do you recall the circumstances under which you first learned that the bankruptcy petition had been filed?

A. I cannot recall how I learned.

Q. Do you recall whether or not you were working in your office at the EOUSA or whether or not you were back at Justice Management Division when you first learned that?

A. I really cannot recall that. I would guess now that I was probably back -- at that time was definitely spending I think all my time at Justice Management Division.

Q. All right. So that would it be your best estimate, although you can't be sure, that you would have heard about it for the first time back at

Justice Management Division?

A. It would be my guess that I heard it back at the Justice Management Division.

Q. And this was a significant fact to you, was it not, since you were the individual in the Justice Department who administered the contract?

A. Yes.

Q. Do you recall from whom you heard this?

A. No, I don't.

Q. All right. Did you -- did you do anything yourself or cause anything to be done after you first learned that the company had filed for bankruptcy?

A. I think what happened was that all of the responsible personnel at Justice met to discuss what the impact of this event was and what steps we should take to protect the Department of Justice or government's interest.

Q. I see. And do you recall going to such a meeting?

A. I recall meeting or telephone, I don't recall any specific meetings. I remember meetings and/or telephone conversations with several individuals.

Q. And do you recall the -- who was present at the first meeting that took place?

A. See, I don't recall specific meetings. I recall contacting people in audit and procurement and EOUSA.

Q. Who did you contact in audit?

A. It would have been either Guy Zimmerman or Dominic Zazzaro.

Q. And do you recall what the substance of that contact was?

A. Just to discuss the impact, to discuss the impact. It was discuss the impact of -- of what was happening to the PROMIS program and to conclude what should be done under the contract.

Q. And did you and Mr. Zimmerman came to some conclusion with regard to any problem that he might have?

A. I don't recall.

MR. COOPER: Objection to that last question. Mr. Videnieks did not testify that he spoke to Mr. Zimmerman. He stated he might have spoken to Mr. Zimmerman or Mr. Zazzaro.

BY MR. LIGHTFOOT:

Q. After you spoke to either one of those two individuals, did you and the other person to whom you talked come to some resolution as to what the problem might be and how it might be solved, if there was any?

A. No. To the best of my recollection, there was a change of meetings, telephone conversations, discussions, over a period of time dealing with that subject.

Q. And in procurement, who did you deal with at that time with respect to INSLAW on this matter?

A. I believe at that time my supervisor was Paul Turnau and his supervisor, Kamal Rahal.

Q. Are both audit and procurement within the Justice Management Division?

A. Yes.

Q. And I believe you also indicated that you had a contact with one more persons at the executive office.

A. I probably spoke with Mike Snyder, Jack Rugh and Brick Brewer.

Q. Do you have a recollection of having spoken to each of those three individuals with respect to INSLAW after the bankruptcy petition was filed?

MR. COOPER: Excuse me, I'm sorry to interfere, but do you mean immediately after the bankruptcy petition was filed? I mean, your question could mean anything, could have meant yesterday.

MR. LIGHTFOOT: No, I'm talking about the period following the bankruptcy filing.

MR. COOPER: Thank you.

THE WITNESS: I don't recall specific instances, but I recall in general that I spoke with all concerned individuals, the ones at OMISS.

BY MR. LIGHTFOOT:

Q. Did anybody at the executive office instruct you to take any steps after you talked to them about the fact of the bankruptcy filing?

A. I don't recall any instructions. You see, they -- the way that the organizations are set up, they don't instruct. In other words, EOUSA and Justice Management Divisions are two equal organizations in the Justice Department.

Q. I understand. But did the EOUSA, did anybody in that office ask you to go out and do anything, for instance, something about gather any information to bring back to them about this matter?

A. No.

Q. Did you, at some point, have a contact either by telephone or in person with the trust -- the U.S. Trustee whose responsibility it was to administer this bankruptcy filing?

A. Please clarify your question as to who you mean by the U.S. Trustee.

Q. Well, I'm talking about the office itself, the office of the U.S. Trustee that was administering the bankruptcy petition that was filed by INSLAW on February the 7th, 1985?

A. I spoke with a man named -- I believe his name was Chuck Miller on two or three occasions.

Q. Now, what were the circumstances of your first calling Mr. Miller? Why did you do that?

A. I don't recall the specific event.

Q. All right. I don't recall --

A. Basically I would -- I probably called him to ask for information about the case.

Q. And did anybody ask you to do that?

A. I don't think so. I think I did that on my own. I would have done that on my own.

Q. Do you remember the first telephone conversation you had with Mr. Miller?

A. Not specifically, that there was one -- that there were two or three conversations.

Q. This is -- I gather you made notes of your telephone conversations or telephone conversation with Mr. Miller, one conversation at least, is that right, Mr. Videnieks?

A. I believe I did.

Q. I would like that marked as 5 and ask you if you recognize that, Mr. Videnieks, as the -- it appears to be in darker ink on the copy, if you recognize the conversation, the Chuck Miller notes of a phone call of February 20, 1985?

(Videnieks Deposition Exhibit Number 5 was marked for identification.)

THE WITNESS: Those are my notes about that telephone call.

BY MR. LIGHTFOOT:

Q. Do you recall making those notes in your own hand at the time of the telephone conversation?

A. Yes, or shortly thereafter.

Q. Now, I'm going to direct your attention to the first two lines of your notes, top 20 unsecured creditors met on Monday, February 25, 1985. We can't go.

Before that conversation, had you -- were you familiar yourself with bankruptcy in general and bankruptcy proceedings?

A. No.

Q. Were you aware that there was such a thing as an unsecured creditors' meeting --

A. No.

Q. Where did you learn about an unsecured creditors' meeting?

A. I can't recall but probably from Chuck Miller.

Q. During that phone call?

A. Yes.

Q. And do you have a specific recollection of the gist of the information you got in this first two lines, that there was a meeting for a specific date and you couldn't go?

A. I believe what I meant by we can't go, the underlined portion of that note, is we, DOJ.

Q. Do you recall before you made this conversation that someone in the department asked for you to determine whether or not it was possible for a department representative to go to the first unsecured creditors' meeting?

A. Please repeat that.

Q. Maybe that was a little unwieldy. Do you remember somebody -- before this conversation with Chuck Miller, do you remember whether anyone in the department asked you to make inquiry to find out whether a department representative could go to an unsecured creditors' meeting?

A. I don't recall that.

Q. You have underlined, we can't, and then there's an exclamation mark after go leading a reader to believe that there was something significant about that. Was there -- to you was there something significant about that?

A. If I recall correctly, it was probably -- I felt that -- it unusual that we can't go to that proceeding.

Q. Did he explain why you couldn't go?

A. He may have. He may have. I don't recall specifically.

Q. Did he indicate to you that you were not among the top 20 unsecured creditors?

A. I don't recall specifically now. If that's what I said in my notes, then he must have said so.

Q. But as you sit here today, you have no recollection of anyone having asked you to determine whether the department could go to such a meeting?

A. No, I don't.

Q. And then the next three lines, if you'll take a look at that, Mr. Videnieks, indicate that you were advised when the -- a meeting of secured creditors --

MR. COOPER: I think it says general.

BY MR. LIGHTFOOT:

Q. General rather, meeting was to take place?

A. Which three lines?

Q. The next paragraph.

MR. COOPER: The next paragraph.

THE WITNESS: It appears he told me when this meeting of creditors will take place and where.

BY MR. LIGHTFOOT:

Q. And do you recall whether you had been instructed by somebody or asked by someone inside the department to find out when you could go to a meeting as a department -- as a representative of the department to find out what was going on in this matter?

A. No.

Q. And then the next paragraph, Mr. Videnieks -- and I'll just read this and correct me if I don't read your writing correctly -- Miller said just because we're not listed, we're not at a disadvantage, he'll list us with INSLAW and I can't read the next name.

A. If INSLAW hasn't.

Q. Hasn't. All right. And then four dots, generally confusing?

A. Generally confusing, okay. I believe at this point that that was my comment on the procedures of the bankruptcy case as explained to me by Miller.

Q. And were you at this time explaining to Mr. Miller that it was important that the Justice Department have some opportunity to attend these meetings so that you could preserve whatever rights the department had in its -- in the obligation owed by INSLAW?

A. Yes, I was concerned with our rights, protecting the interests of the government.

Q. And had anyone particular in EOUSA asked you to make that known to the U.S. Trustee office?

A. No.

Q. Had Mr. Brewer, in particular, asked you to do that?

A. No, I believe I acted on my own basically. I think it was at my own initiative.

Q. Mr. Videnieks, before the bankruptcy petition itself was filed on February the 7th and this conversation took place almost two weeks later, 13 days later on the 20th of February, do you recall having meetings at which Mr. Brewer was present between those two dates?

A. I do not recall. That was such a long time ago. I really cannot remember specific meetings.

Q. Do you recall, though, attending meetings after the bankruptcy petition was filed in which Mr. Brewer was present?

A. I don't recall. That does not mean that there were no such meetings. There may have been meetings and/or telephone conversations.

Q. Do you ever recall Mr. Brewer indicating to you in words or substance that he was quite concerned because INSLAW had filed for bankruptcy?

A. As did other individuals.

Q. But Mr. Brewer did?

A. Yes, he was -- I imagine. I don't recall any specifics. I imagine since everyone that I can remember were concerned about this event, that he also was concerned about it and I imagine at that time we did speak about it.

Q. Well, you imagine that because at different times, Mr. Brewer expressed to you his concern about that subject, did he not?

A. Please rephrase that.

Q. Well, you understood that Mr. Brewer was concerned because you heard him express such concern in your presence, did he not?

A. It's a confusing question. Can you please restate that in the form of a question.

Q. Let me just back up. During the time that you administered this contract, from time to time you would have discussions with Mr. Brewer either just with him alone or with others with respect to the INSLAW contract, did you not?

A. I don't recall -- well, I imagine I may have talked with Brewer alone, but that was not the normal situation.

Q. And then from time to time, you talked to him in meetings where others were present where the subject of the INSLAW contract came up?

(202) 659-5180

A. Yes, I did talk to him.

Q. And these meetings occurred both before and after the petition for bankruptcy was filed, is that right?

A. Yes.

Q. All right.

A. But then again, let me say -- you keep coming back to these meetings, and let me repeat what I said, okay? There were telephone conversations and meetings, series of them. I cannot recall specifically any meetings or formal meetings as such.

Q. Now, the next paragraph and the next four lines in this telephone memo, and I'm going to read this, Mr. Videnieks, and if you would just read along with me, it might speed things up.

I told him that we'll counterclaim for computer center costs in the amount of $80 to $100K, which I gather is thousand, is that right?

A. K is a thousand, yes.

Q. And that INSLAW -- would you tell me what the next word is?

January 28, 1983 to which this letter is a response. Mr. Videnieks did not indicate to Mr. Hannon at the December 3 meeting the nature of any alleged violation by INSLAW of the advance payments article of the contract, or advise that any action need be taken by INSLAW to rectify any alleged violation.

During the period of performance under the contract, the Department has had available to it and/or has been provided information regarding the financial status and prospects of INSLAW. It does appear, however, unfortunately, that some within the Department may be laboring under a misimpression regarding the financial status and business prospects of INSLAW, and thus became unduly concerned regarding the alleged "risk" to which the Department is exposed because of the increase in INSLAW's line of credit.

The advance payments presently are approximately $280,000 per month. As noted by Mr. Whitely at the February 4 meeting, this amount generally reflects the value of services provided by INSLAW to the Department each month. Hence, the payments effectively can be viewed either as a 100% "advance progress payment" or, more accurately, as advance payments provided on a month-by-month basis only. The important point is that this is not a situation where the advance payments represent a massive commitment of United States Government funds, over and above the contractor's actual level of progress under the contract; rather, consistent with the most conservative view of the advance payments provisions of the Federal Procurement Regulations, the modest advance payments here accurately reflect the contractor's progress and expose the Government to extremely slight risk. They are essential to assist in financing a small but viable contractor which is providing a vitally needed service to the Department of Justice.

Discontinuance of Advance Payments is not in the Best Interests of the Department of Justice or INSLAW

As indicated in the Summary of Facts set forth above, there are some questions extant regarding the circumstances which led the contracting parties to the present discussion regarding advance payments. These questions appear to reflect an unfortunate lack of communication by both parties and not an intentional effort by either party to conceal any material

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A. Still, I believe it's still owes advance payments of 80K.

Q. Now, had you learned from someone in the Department of Justice that the department was going to counterclaim against INSLAW in that amount?

A. I can't recall. I must have.

Q. That would not have been a matter that you would have decided on your own, would it, that a counterclaim would be filed?

A. I would not be doing it myself. That would be done by attorneys.

Q. But as you sit here, you can't recall who told you that?

A. I can't recall.

Q. And the next paragraph is, Miller said that no current list of creditors is -- I'm sorry. The current list of creditors is temporary and that a final list will be filed later, is that right?

A. Right.

Q. And then there's a question mark?

A. Yes.

Q. What does the question mark mean?

A. I believe it relates back to the comment at the end of the third paragraph which is generally confusing.

Q. You find that confusing. What is confusing about that?

A. My lack of familiarity with the process.

Q. You just didn't understand it?

A. I didn't understand it.

Q. You couldn't understand why you couldn't get a list of the creditors of INSLAW at that time?

A. Why we couldn't get a list?

Q. Yes.

A. I don't think that's the gist of this.

Q. Well, it's temporary. Well, did you understand from Miller that that was not a complete list of creditors?

A. I can't recall in such detail this conversation but it may relate to the paragraph above that Justice is not on the list.

Q. Well, were you -- had you asked Mr. Miller during that conversation for a current list of creditors?

A. I did not ask him -- to the best of my recollection, I did not ask Miller for a list of creditors. I believe that I was -- my purpose of calling Miller was to see whether we were on it.

Q. All right. Did you have any interest in obtaining a list of the other creditors of INSLAW at that time?

A. No, and I don't think I ever got it after that.

(Discussion off the record.)

BY MR. LIGHTFOOT:

Q. Mr. Videnieks, with respect to the same document which has been marked as Videnieks Number 5, I'm going to turn to the next entry on your notes which appears to be notes of a conversation on the same date. I appreciate that this one is much more difficult to read, but I'm going to try to go through it with you, if I can.

The first notations appear to be the initials J.D. Would that be Jack Rugh?

A. Yes.

Q. And it indicates he called re: our computer?

A. Yes.

Q. Is that right?

A. Right.

Q. What does that mean?

A. We, DOJ, had furnished INSLAW a computer for performance of the contract, which was installed at INSLAW.

Q. I see. What does it mean when he says he called re: our computer? Did he express something with respect to the Justice Department computer that was located at INSLAW?

A. I can't recall.

Q. You have no recollection whether or not Mr. Rugh said anything specifically about that computer that was located at INSLAW?

A. I don't recall whether he said anything specific or general about it.

Q. Well, is it fair to say that there was a concern in the department among those who had anything to do with the INSLAW contract at that time, that you didn't want to lose the computer that was located on INSLAW's premises?

A. I think there was concern that the computer -- not that it would be lost, that it would not be accessible as a result of bankruptcy proceedings.

Q. And did you have -- I'm sorry, I didn't mean to interrupt you.

A. That was basically it.

Q. And do you remember conversations with other people at Justice at this time with regard to what steps could be taken to get the computer back or whatever way you can to preserve your interest in the computer?

A. There were conversations about that.

Q. And tell me about those conversations, Mr. Videnieks? First, who was present when these conversations took place?

A. To the best of my recollection, the conversations probably were over the telephone.

Q. And who did you have the conversations with?

A. I would guess that they were with Jack Rugh and Mike Snyder.

Q. Okay. And do you recall what the substance of those conversations was?

A. In general about that government furnished computer system located at INSLAW.

Q. Well, did they indicate that -- any person in these conversations indicate what a desired step would be to be taken in assuring that the Justice Department didn't lose its interest in that computer?

A. I don't recall any specific desired steps to be taken. I don't recall them.

Q. Do you recall whether anybody asked whether or not you could make inquiry of the bankruptcy court or the U.S. Trustee Office to determine whether or not you could take the machine back?

A. I did not make such inquiries. No one asked me to make such inquiries. I don't recall the contracting officer being asked to deal with the court.

Q. All right. Now, the next sentence after the one I just read, the first two words appear to be Brick talked and then on the next line it says, to Stanton, and then the next one is even harder to read, but the numbers 11 and then on the next line the number 7 appears. Do you see that?

A. Do you have a clearer copy?

Q. I don't. I don't. These are -- this is what we got and that's the best that I can do. Well, here's one. Let me make this suggestion, and you tell me whether you agree or not agree, that your words read, no way 11, will be 7.

A. On this copy it is clearer and that's what it appears to say.

Q. All right. Now, today do you have an understanding of what those numbers mean?

A. I'm very generally familiar with what 11 is.

Q. What is 11?

A. I think it deals with -- well, anyway I'm generally familiar with it. A 7, I don't know what it means.

Q. What is your understanding of what an 11 is?

A. I've learned since -- since I understand that now INSLAW is operating under 11.

Q. Chapter 11?

A. Yes, Chapter 11 allows one to -- an organization to continue performance.

Q. Do you know what -- today what a 7 is?

A. No.

Q. Have you ever known what a 7 is?

A. I don't think I have, no.

Q. Do you have an understanding of 7, in terms of in a bankruptcy, that 7 is not as good as 11. It sounds like a crap game.

A. It really does. I would guess 11 is better because it allows one to operate and I don't know what 7 does. I really don't know what 7 does.

Q. Did you ever hear that if you went into Chapter 7, then you would become liquidated, you would go out of business? You never understood that?

A. It may have been said to me, but it never registered. I don't know.

Q. Now, can I understand, Mr. Videnieks, that what this means -- let me just ask you this. The three lines, if you would look at that -- at this notation, the three lines that follow the date 2-20-85 and then the initials J.R., are -- does that full three-line entry all refer to the same phone call?

A. I would guess it refers to my phone call with -- my telephone conversation, I don't know who called who, with Jack Rugh on that date.

Q. Well, wouldn't it appear, in fact, that he called you because your first indication is that Jack Rugh called?

A. Yes, then he called.

Q. He called you?

A. Yes.

Q. He called concerning the computer you had at INSLAW, is that right?

A. That's what it says here.

Q. And then he indicated to you, Jack Rugh, that Brick -- and that refers to Brick Brewer, does it?

A. Yes.

Q. That he had talked to Tom Stanton.

A. I don't know Mr. Stanton's first name.

Q. Do you know who Mr. Stanton is?

A. Now I know. I imagine I knew then, too, but I've never met the gentleman.

Q. He's the executive officer of the U.S. Trustee, the director of that office?

A. Yes.

Q. And that Mr. Stanton had said, no way 11, it will be a 7, is that right?

A. I don't know -- I would say that could have well been -- that could have been Jack Rugh's words.

Q. That's what Jack was telling you, but don't your notes indicate that Jack is telling you what Brick was told by Stanton?

A. I don't recall specifically but if you ask me for what I generally can remember, this -- I would attribute that to Jack.

Q. Well, it's your notes so that's why I'm asking you. On reading those notes, is it a fair interpretation of your notes that you wrote down that Jack called you and he relayed information to you, one of the things he told you was that Brick had told him, Jack, that Brick had talked to Stanton, and that Stanton had told Brick no way 11, it will be a 7? Is that a fair interpretation of your notes?

A. I don't think so.

Q. Okay. You tell me what a fair interpretation of those notes is, Mr. Videnieks.

A. I think this was a long time ago. I don't recall the specifics of these notes. But at this point in time, okay, it's two and a half years later looking at those notes, those were probably attributable to Jack Rugh, and I suggest that maybe he would be the individual who we ask that.

Q. Well, you put these words -- no way 11, it will be 7. Do those notes indicate that that's what Jack Rugh was saying or that that's what Stanton told Brewer who in turn told --

MR. COOPER: Objection, counsel. The notes speak for themselves. If you want to ask Mr. Videnieks whether he recalls if Mr. Rugh said this, Stanton said that or if his recollection is that Mr. Rugh said that, that's an appropriate request. But you've now asked this question three times.

I think that the crux of his notes is something that he says he can only remember in hindsight. Ask him facts. Don't try and argue about the construction of a document that he says he doesn't recall specifically.

BY MR. LIGHTFOOT:

Q. Mr. Videnieks, when you wrote the words no way 11, it will be a 7 -- when you wrote that down, whose words were they that you were writing down on that piece of paper?

A. It was two and a half years ago. The entire three lines there refer to my conversation with Jack Rugh.

Q. I understand that. But the question, Mr. Videnieks, is whose words were they in your mind when you wrote that down?

A. In my mind right now -- again I'm saying my recollection is not good, something that far back. I would guess that those are Jack's thoughts on the matter.

Q. And then --

A. But I would suggest you ask him since he may remember better.

Q. All right. Well, so that I understand this, then, your best recall today is that those words, no way 11, it will be a 7, are the thoughts of Jack Rugh --

A. Yes, yes.

Q. -- and not Mr. Stanton?

A. To the best of my recollection, that's what I would have to say, yes.

Q. And then the last phrase is, appears to be, need home for a computer, is that right?

A. Again I would say that's Jack saying -- expressing concern about the PROMIS program, that we need a home for the government-furnished computer in the event that for some reason or another the doors -- we were denied access.

Q. And did you make efforts after this phone call to find places that could physically house the computer that at that time was located at INSLAW?

A. I personally did not take such steps, but I think, if I remember correctly, that Jack Rugh and Mike Snyder did make telephone calls and try to -- dealt with the matter, but the way we operated under the contract, they would have taken up those concepts.

Q. And do you know whether or not a home was eventually found for that particular computer?

A. It stayed where it was.

Q. Mr. Videnieks, did you ever hear from the date that the bankruptcy was filed on February 7, 1985, until today that anyone in the Department of Justice had an interest in assuring that INSLAW would be liquidated?

A. Number one, I don't understand what the term liquidate is, and two, I don't remember the conversation.

Q. Did you ever hear that anyone in the Department had an interet to assure INSLAW would go out of business -- it would go out of business?

A. Rephrase that, please.

Q. Did you ever hear from any others, say or in writing or hear from any source from the date that the bankruptcy was filed until today that anyone at all who worked for the Department of Justice from the Attorney General on down had an interest in making sure that INSLAW went out of business?

A. No.

Q. You never heard that?

A. I don't recall that at all, no.

Q. Now, I have a document that goes back, and these are again your notes, Mr. Videnieks -- that my understanding is go back to the year 1983. As not to mislead you, I tell you this in advance. This would be 6.

(Videnieks Deposition Exhibit Number 6 was marked for identification.)

BY MR. LIGHTFOOT:

Q. Let me just say, too, Mr. Videnieks, that there appear to be the underlining of words at approximately six locations in that document. Those are not your underlinings. Those are our underlining that are copied, all right? The original didn't have those.

So as not to waste time, I'm particularly interested in the entry that is May the 2nd which is called OMISS.

A. Okay.

Q. I just ask you to read that, the whole entry. It goes on about ten lines before I ask you anything.

A. Okay.

Q. Now, can I ask you to go -- let me do this. Let me try to read through it and if I make a mistake you correct me and we'll try to save some time. Called OMISS, Omiss is an office at the EOUSA?

A. That's right. That's the office that Brick Brewer manages.

Q. Brick on A/L, annual leave?

A. Yes.

Q. Discussed the preliminary with Mike. Would that have been Mike Snyder?

A. Yes.

Q. Common concern, is that with the next --

A. Common concern of losing.

Q. Of losing?

A. Control of contract administration.

Q. Then in parentheses what does it say?

A. Mike Snyder said Dimm is very arrogant.

Q. Who is Dimm?

A. He was an INSLAW management type who, if I recollect correctly, worked under John Gizarelli or he may have taken Gizarelli's spot, if Gizarelli had left at that time. This is '83 you're saying?

Q. Right.

A. Then at that time I believe Dimm was working for Gizarelli.

Q. Now, the next sentence is M.S. Is that again Mike Snyder?

A. Yes.

Q. Said T/H, what does the T/H mean?

A. I don't recall specifically but Tyson's name begins with a T and Hamilton's name begins with an H.

Q. Trout's name?

A. It could have been Tyson or -- I think it was a government -- you asked me to suppose what that means. It could have been that.

Q. Either Tyson or Trout and Hamilton?

A. Yes. I don't recall.

Q. Is it about USA -- the United States Attorney in Pittsburgh? Is that what that means?

A. Yes.

Q. His remark to an INSLAW team leader, re: Apparent INSLAW bankruptcy?

A. Correct, that's what it says.

Q. And then M.S. again is Mike Snyder -- said he thinks info came from the United States Attorney in California, Steve Trout (phonetic)?

A. USA/LA.

Q. LA rather, I'm sorry.

A. Yes.

Q. Who may have gotten info, information is that?

A. Yes.

Q. From Klaus. Who is Klaus?

A. Klaus is a government employee. I don't remember his last name.

Q. And does that indicate that you were told by Snyder that he thinks that the info about the apparent INSLAW bankruptcy came from Steve Trout, who may have gotten it from Klaus?

A. I don't recall. I mean I'll have to go by this note, what the note says and let it speak for itself. I don't recall the specifics --

Q. You don't have a specific recollection?

A. No. I think it's a clear note.

Q. And the next thing is Trout apparently made --

maybe you can help me with the rest of that -- some statements?

A. (S), some statements.

Q. Does that mean a statement or maybe more than one statement?

A. Yes.

Q. In front of all United States Attorneys?

A. At L.A.

Q. At L.A.?

A. And then question mark after it. I don't know what the question mark means.

Q. And do you recall that you heard from Snyder that Trout made some statement about -- would it have been the subject of an apparent INSLAW bankruptcy?

A. If that's what the note says. I'm reading it, too, but I don't recall specifics from such a long time ago.

Q. I notice that I forgot one other thing, Mr. Videnieks, and that goes back to number 5. It's the last entry in November, number 5, which is dated -- this one here is 5, way down at the bottom it says

February 22, 1985, Harry, is it G?

A. Yes, Harry G. I don't know who G would have been. Harry G.

MR. COOPER: Could it have been F?

THE WITNESS: Is that an F? It looks like my G, but I sure -- Harry G.

BY MR. LIGHTFOOT:

Q. In any event, it seems to indicate that whoever that person is, that he has your copies, would that be, cc?

A. My copy singular it appears to say, of bankruptcy petition. I must have gotten a copy of the bankruptcy petition.

Q. And would that indicate that at this point Harry somebody was in possession of yours?

A. That's what it appears to say.

Q. And do you have any recollection today of who the person is who is referred to as Harry G. or F. or whatever?

A. It may be a temporary block of the mind. I really don't remember who Harry G. is. Harry F. would have been Harry Flickinger who was the

Assistant Attorney General -- Assistant Attorney General -- what was his title? He was below the Assistant Attorney General for administration, one level below him.

Q. He was in the Justice Management Division, was he?

A. Yes, right.

Q. Do you recall having made a request yourself for the INSLAW bankruptcy petition after you had learned it had been filed?

A. I don't recall. I may have received a courtesy copy.

Q. All right. Did you at any time with respect to -- let me just ask you this. From the point that the bankruptcy petition was filed in February of 1985, did you ever have occasion to visit the executive office of U.S. Trustees?

A. No.

Q. All right. From the point that the petition was filed, did you ever have any conversations with respect to INSLAW with Mr. Stanton of that office?

A. Never.

Q. Let me ask you about three deputies, a Mr. -- I'm going to have a problem with the -- Lobisco, with Mr. Lobisco?

A. No.

Q. There's a woman by the name of Andrea Winkler, who is a deputy -- who was a deputy to Mr. Stanton at the time. Did you ever have any conversations with her?

A. I may have -- the name is familiar, but I would say, no. To the best of my recollection, no.

Q. And the last one is a man whose name is Anthony Pasciuto?

A. I know him, okay, and I know Lobisco, but I've not -- I have not talked to them, no.

Q. Do you recall that you learned the identity of these people in relation to the bankruptcy filing in INSLAW?

A. No. They were both working for the Justice Management Division on the same hallway where I was.

Q. Is that right?

A. Maybe not -- the first guy, Lobisco didn't.

Vince Lobisco, I know him by sight. Never spoken to him.

Q. I see. But did you ever have any contact with any of those three individuals with regard to the INSLAW matter?

A. No.

MR. LIGHTFOOT: I have nothing further. Do you have any questions?

MR. COOPER: No.

(Reading and signature not waived.)

(Thereupon, at 5:15 p.m., the deposition was concluded.)

- - - - -

DISTRICT OF COLUMBIA, to wit:

I, Debra L. Grothmann, the officer before whom the foregoing deposition was taken, do hereby certify that the within-named witness personally appeared before me at the time and place herein set out, and after having been duly sworn by me, according to law, was examined by counsel.

I further certify that the examination was recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this _____day of_____________, 1987.

____

DEBRA L. GROTHMANN

Notary Public

MY COMMISSION EXPIRES:

2-14-91

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DEPOSITION OF PETER VIDENIEKS

MARCH 26, 1987

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

____

PETER VIDENIEKS

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this _________ day of _______________, 1987, and executed the above certificate in my presence.

____

NOTARY PUBLIC IN AND FOR

____

MY COMMISSION EXPIRES:______________________

WITNESS: P. VIDENIEKS CASE: In Re: INSLAW, Inc.

Please note any errors and the corrections thereof on this errata sheet. The rules require a reason for any change or correction. It may be general, such as "To correct stenographic error," or "To clarify the record," or "To conform with the facts."

PAGE	LINE	CORRECTION	REASON FOR CHANGE

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February 10, 1983

HAND-DELIVERED

U. S. Department of Justice
Executive Office for United States Attorneys
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Attention: Mr. Peter Videnieks, Contracting Officer

Re: Contract No. JVUSA-82-C-0074
Advance Payments

Dear Mr. Videnieks:

This will confirm and follow-up our meeting on February 4, 1983 at the U.S. Department of Justice regarding the status of advance payments under Contract No. JVUSA-82-C-0074 and other matters. Pursuant to the request of William Snider, Administrative Counsel, who chaired the meeting for the Government, and of Kamal Rahal, Director of Procurement, we wish to take this opportunity to explain the circumstances -- and misunderstandings -- which apparently led to the Notice of Intent to Discontinue Advance Payments which you sent to INSLAW, Inc. by an undated letter received on January 28, 1983.

We also shall explain why the continuation of advance payments is essential to continued prompt and efficient performance by INSLAW and is in the best interests of both INSLAW and of the Department of Justice. This letter is intended to cover only the advance payments issue. To the extent other matters are extant, they will be covered separately to avoid any possible confusion of facts or issues.

DEPOSITION
EXHIBIT
1 3/26/87
Videnieks

The nub of the matter is straightforward. The Government, by regulation and contract, provides for advance payments where such payments are necessary or desirable to assure performance by a contractor. See Federal Procurement Regulations (FPR), Subpart 1-30.4 -- Advance Payments; Defense Acquisition Regulation (DAR), Appendix E, Part 4 - Advance Payments. The key element in the Government's decision to provide advance payments, aside from the contractor's need, is the assessment of the risk to the Government. Here, as acknowledged by William Whiteley, Supervisory Auditor, the Department's auditor who was in the best position, from the Government's standpoint, among those present at the February 4 meeting to comment on this point, the risk to the Government is very slight. As we described at the meeting and shall outline below, any such risk, however slight, is less today than it was at the time of the award of the contract.

Accordingly, even if any infraction of the covenants in the contract inadvertently occurred, the practical effect has not been to increase the Department's exposure or risk. Hence, discontinuing advance payments would serve no purpose other than retribution by some within the Department against INSLAW -- to the detriment of the important PROMIS Program and the Department's own interests. Such interests can better be served, constructively, through improved communication between the parties.

INSLAW is committed to working with the Department of Justice in an effort to improve the process of communication between the contracting parties. Along these lines, we urge that the Department take all necessary action to make such a commitment meaningful, and that the atmosphere of unfounded accusation and hostility unfortunately evidenced by some at the February 4 meeting be corrected, if need be through a change of administrative personnel on the Government's side or otherwise.

Summary of Facts

On March 16, 1982, the U.S. Department of Justice and INSLAW, Inc. entered into Contract No. JVUSA-82-C-0074 for the implementation of PROMIS in the 94 United States Attorneys' Offices. Article XXXI of the contract covers advance payments. It follows closely the requirements of the Federal Procurement Regulations.

At the time of award, INSLAW had an existing banking relationship with the 1st American Bank of Washington, D.C. This relationship included certain loans, specifically a $200,000 equipment note and a $500,000 receivables line of credit. There appears to be no question that the Department of Justice was aware of the existence of the banking relationship. We are uncertain, however, of the extent to which the Department was aware of the details of this relationship, the loans outstanding, their terms and conditions and related matters -- including INSLAW's need for and intent to explore other possible banking relationships which might be preferable to 1st American.

On April 13, 1982, INSLAW established a banking relationship with the Bank of Bethesda. This relationship was intended to replace that with the 1st American Bank. It included commitments by the Bank of Bethesda to replace the existing $200,000 equipment note and the $500,000 receivables line of credit, and to provide a $500,000 combination note and revolving line of credit to INSLAW secured by INSLAW's lease at its 1125 15th Street, N.W., Washington, D.C. offices. It is our understanding that the Department now has copies of the correspondence reflecting the new INSLAW banking relationship and its loans/credit lines from the Bank of Bethesda.

The Department was aware of the change in INSLAW's banking relationship, since the Special Bank Account provided for under Contract Article XXXI - Advance Payments was set up at the Bank of Bethesda, with bi-monthly drawdowns co-signed by the Department and INSLAW. There apparently is a legitimate question, however, of when the Department became aware of the additional line of credit which the Bank of Bethesda extended to INSLAW.

At the February 4 meeting Mr. William Whitely stated that the Department became aware of the additional line of credit in September - October, 1982 at which time the matter was regarded as one that would be resolved through the normal audit process. For reasons that are not clear, the issue nonetheless was raised by the Contracting Officer, separate and apart from the normal audit process, at a December 3, 1982 meeting with Murray W. Hannon, Controller of INSLAW, and resulted ultimately in the undated letter from Mr. Videnieks, received by INSLAW on facts -- there would be no purpose in doing so -- or to complicate the administration of the contract. We believe that the facts now must be viewed objectively in the clear light of the intent of the Federal Procurement Regulations and the contract, without the negative cast that an atmosphere of bias or retribution creates.

A fair review of the facts suggests some possibility that INSLAW may not have affirmatively provided all of the information which either was required or desired regarding the change in its banking relationship. Perhaps INSLAW assumed too much regarding the extent of the Department's knowledge of the change in INSLAW's banking relationship from 1st American Bank of Washington, D.C. to the Bank of Bethesda; or of the increased line of credit; or of the significance of the Department's silence from September - October, 1982, to early December 1982, when the matter first was raised by the Contracting Officer. To that extent the undated letter received by INSLAW on January 28, 1983 came as a surprise - it appeared to INSLAW to be a somewhat "after the fact" complaint by the Department.

A fair review of the facts also reveals absolutely no affirmative evidence suggesting that INSLAW intended to violate any of the covenants in Article XXXI of the contract. Indeed, in the one instance where INSLAW felt that it had violated one of the covenants in Article XXXI - because of the Department's delayed payments resulting from the so-called Prompt Payments Act - INSLAW formally so advised the Department and the matter was put to rest. Hence, INSLAW's "track record", so to speak, is of full disclosure, and one must reasonably conclude that the current problem results from an unfortunate lack of or breakdown in communication between the parties.

There appears to be agreement that INSLAW's performance under the contract has been excellent. No purpose would be served by jeopardizing performance under this vital program because of anyone's personal effort to seek retribution against INSLAW, against the best interests of the Department, and/or to pursue their view of a possible technical breach of the covenants in the advance payments article of the contract, i.e., assuming that the Department did not know and/or reasonably should not have inquired into the details of

INSLAW's new banking relationship earlier. It thus is necessary to look afresh at whether advance payments still are warranted by the facts and hence should be continued. The facts compel an affirmative response.

INSLAW still needs the advance payments under this contract. The plain fact is -- and this can be confirmed by the Department audit staff -- that INSLAW simply cannot in its present financial condition continue performance without continuation of advance payments. Any delay or discontinuance would threaten timely performance by INSLAW and would, under the circumstances, be extremely arbitrary.

At the same time, the facts -- which also can be confirmed by the Department's audit staff -- reveal that INSLAW's financial condition overall is far better than it was at the time of award of the contract. Hence, the risk to the Government -- which as noted above, is the key to the Government's assessment of advance payments -- is substantially less than it was at the time of award, and on that basis alone advance payments should be continued uninterrupted.

> First, the company during the course of the past year has made very substantial progress toward realizing its business goals regarding the development of commercial business. To this extent, INSLAW not only is a going concern but in fact is a growing business with a constantly improving representation in its field.
>
> Second, the financial viability of INSLAW has been confirmed -- objectively by an outsider -- by the fact that the Bank of Bethesda was willing to advance an additional line of credit during the course of the past year. Obviously, if INSLAW were faring poorly, the bank would have no business interest in lending INSLAW more money.

Finally, it is important to note how the increased indebtedness was used and why it was obtained. While money, of course, is fungible and an organization uses any given quantum of money for a number of purposes, it is important to note that the Executive Office for United States Attorneys' estimated share of the differential between the FY 82 SRU rate and the actual rate experienced by INSLAW is approximately $200,000, which sum is being returned to INSLAW by the Department incrementally month-by-month through FY 1983. As a practical matter, therefore, INSLAW is "advancing" the Department on a continuing basis more than $200,000, while at the same time month-by-month the Department is advancing INSLAW approximately $280,000. INSLAW has no quarrel with this accounting anomaly but this must be recognized in properly analyzing the overall situation. (The estimated differential in Summer, 1982 was approximately $460,000, almost identical in amount to the increased line of credit.)

Additional portions of the increased line of credit obtained from the Bank of Bethesda have been used to fund INSLAW's commercial marketing program, which assures INSLAW's continuing growth and viability. Long term, the Government benefits from such growth through lower prices and rates, and a wider range of products available to Government customers, all developed at private expense.

One final point: The overall viability of INSLAW, Inc. is underlined by the fact that "venture capitalists" and investment bankers have shown a genuine interest in INSLAW as an investment vehicle for the 1980s. If INSLAW were not a growing concern, then these private entrepreneurs would have no interest in investing their funds in INSLAW. Hence, the objective fact that the Government's risk in providing advance payments is less today than it was last year is proven by the actions of outsiders who view INSLAW strictly as a business investment. As indicated by Mr. William Hamilton, President of INSLAW, at the February 4 meeting, INSLAW would be pleased to provide information regarding the above. Such information, including analyses of INSLAW's future potential and business plans, necessarily is strictly confidential and would have to be provided with that limitation. Information of that type is not ordinarily a part of the Government's routine audit function.

Conclusion

Based on the facts and the analyses set forth herein, it is clear that no purpose would be served by discontinuing advance payments under the PROMIS contract between INSLAW and the Department, and that such a discontinuance would be extremely detrimental to the Department and to INSLAW. It would be counterproductive, arbitrary and in our view reflect poorly on the Department. Please be assured that INSLAW shares in the sentiments expressed by Messrs. Rahal and Snider for the Department, to the effect that both parties should work to resolve this matter and improve communications under the contract. INSLAW, and its predecessor organization, have been committed to the advancement of justice for more than a decade. Its contribution to that end has long been recognized and it has every reason from a practical standpoint, as well as from the standpoint of its management's corporate policy, to have its relations at every level with the Department progress and improve.

We respectfully request that no further action be taken with regard to discontinuing advance payments under Contract No. JVUSA-82-C-0074.

If you have any questions regarding the above, we shall be happy to discuss them with you at your earliest convenience.

Very truly yours,

PETTIT & MARTIN

By:
Harvey G. Sherzer

cc: Kamal Rahal, Director of Procurement
William Snider, Administrative Counsel
William Whiteley, Supervisory Auditor

William Hamilton, President, INSLAW, Inc.
John Hozik, Partner, Arthur Young & Co.

HGS:ba

UNITED STATES DEPARTMENT OF JUSTICE
OFFICIAL FILE COPY

Contract JVUSA-82-C-0074
Discontinuation of Advance Payments

FEB 17 1983

W. J. Snider
Administrative Counsel

Peter Videnieks
Contracting Officer

Reference: Pettit and Martin Letter dated 2/10/83.

Please provide your comments regarding the content of the referenced letter. It is a response to the Department of Justice Notice to Discontinue Advance Payments (copy attached) which notified INSLAW of the Contracting Officer's intent to discontinue advance payments in thirty days (February 27, 1983). The notice was precipitated by the disclosure of INSLAW's violation of the provisions of Article XXXI, Advance Payments, of the subject contract.

In addition to any other comments which you may have, please comment on the following statments/points made by INSLAW:

1. "The key elerment in the Government's decision to provide advance payments, aside from the Contractor's need, is the assessment of the risk to the Government."

2. The timing of the Department of Justice Notice of Intent to Discontinue Advance Payments makes it an "...'after the fact' complaint...". (Is there a legal significance here?)

3. INSLAW's violation of provisions of Article XXXI was "...a possible technical breach...".

4. The Government should have "... inquired into the details of INSLAW's new banking relationship earlier."

5. Discontinuation of advance payments would be arbitrary.

6. "...portions of the increased line of credit obtained from the Bank of Bethesda have been used to fund INSLAW's commercial

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Videnieks

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11-73

marketing program...". (Can advance payments be authorized if a contractor is able to obtain commercial financing and elects to finance non-contract ventures?)

7. Private entrepreneurs have interest in providing funds to INSLAW. (Apparent ability to obtain private financing.)

In accordance with FPR-30.404(b) "Generally...advance payments should not be authorized unless no other means of adequate financing is available..."

The determination by the Assistant Attorney General for Administration to grant advance payments to INSLAW was based upon the findings that "...no means of adequate financing other than by advance payments are available to the contractor..." as recommended to him by procurement and audit personnel relying upon information made available by INSLAW.

Please provide legal advice with respect to the foregoing by close of business on February 2, 1983. Thank you.

Correspondence copies:
Official File
General Chron
H. Flickinger
K. Rahal
PBT:PVidenieks:633-4544:2/16/83:dmk:IBM 2290

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Contract JVUSA-82-C-0074
Discontinuation of Advance Payments

C. M. Brewer, Director
Office of Management Information
Systems and Support
EOUSA

Peter Videnieks
Contracting Officer

Reference: Pettit and Martin Letter dated 2/10/83.

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In addition to any other comments which you may have, please comment on th following statments/points:

1. "lack of communication" between INSLAW and Department of Justice;
2. "...INSLAW's performance under the contract has been excellent..
3. "...anyone's personal effort to seek retribution against INSLAW.

INSLAW's statements regarding the financial impact of advance payment discontinuation are being reviewed by the Department of Justice Audit Staff. Please comment on the probable programmatic effects of INSLAW's inability to continue contract performance, both, in the short run and after a few sites have PROMIS fully implemented.

Please provide your response by the close of business on February 23, 1983. Thank you.

Correspondence copies:
Official File
General Chron
H. Flickinger
K. Rahal
PBT:PVidenieks:633-4544:2/16/83:dmk:IBM 2292

UNITED STATES DEPARTMENT OF JUSTICE
OFFICIAL FILE COPY

17 FEB 1983

Contract JVUSA-82-C-0074
Discontinuation of Advance Payments

Guy K. Zimmerman, Director
Audit Staff
Attn: Mr. Robert Whitcley

Peter Videnieks
Contracting Officer

Reference: Pettit and Martin Letter dated 2/10/83.

Please provide your comments regarding the content of the referenced letter. It is a response to the Department of Justice Notice to Discontinue Advance Payments (copy attached) which notified INSLAW of the Contracting Officer's intent to discontinue advance payments in thirty days (February 27, 1983). The notice was precipitated by the disclosure of INSLAW's violation of the provisions of Article XXXI, Advance Payments, of the subject contract.

In addition to any other comments which you may have, please comment on the following statments/points made by INSLAW:

1. The "risk to the Government" of authorizing advance payments to INSLAW"...is very slight."
2. The risk to the Government today is lesser than it was at time of contract award. (Considering DOJ investment on PROMIS-DOJ has contracted for a system and currently the contract has been funded in the amount of $3,752,000.)
3. "... even if any infraction of the covenants in the contract inadvertently occurred, the practical effect has not been to increase the Department's exposure to risk."
4. The Department was aware of the existence at the time of contract award of the $200,000 equipment note and the $500,000 line of credit secured by receivables.
5. "...the Department became aware of the additional line of credit in September - October, 1982 at which time the matter was regarded as one that would be resolved through the normal audit process."

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6. Second paragraph on page 4. (Is INSLAW solvent?)

7. There is "...lack of communication..." between INSLAW and the Department of Justice.

8. Second paragraph on page 5.

9. "...INSLAW's 'track record'...is of full disclosure...the current problem results from...lack of or breakdown in communication between the parties."

10. Second paragraph on page 6. (INSLAW cannot perform without advance payments. Will INSLAW fold without advance payments?)

11. INSLAW's financial condition is better now than it was at time of contract award.

12. INSLAW has more commercial business now than at time of contract award.

13. The Bank of Bethesda confirmed the financial viability of INSLAW by lending INSLAW more money.

14. First paragraph on page 7.

15. INSLAW can get funds from "venture capitalists" and investors. (How much? Are advance payments still necessary? May advance payments be authorized?)

16. INSLAW is a viable going concern.

Please provide your comments by the close of business on February 23, 1983. Thank You.

Correspondence copies:
Official File
General Chron
H. Flickinger
K. Rahal
Robert Whiteley, Audit Staff
PBT:PVidenieks:633-4544:2/16/83:dmk:IBM 2290

General meeting of creditors scheduled for March 19 1P . . .
Hearing Room [illegible] 1st floor [illegible] [illegible] NW

[illegible]

2/20/85 Telecon w/ Chuck Miller

Top 20 unsecured creditors meet on Mon. 2/25/85 — We can't go!

General meeting of creditors scheduled for March 19, 1985, 1P @ Hearing Room, 1st floor, Sheridan Bldg., 206 15th St. NW.

Miller said just because we're not listed were not at a disadvantage ... he'd list us if INSLAW hasn't ... generally confusing.

I told him that we'll counterclaim for Computer Center costs in the amount of 500-600K ... and that INSLAW still owes AP of $60K.

Miller said that the current list of creditors is temporary and that a formal list will be filed later .... ?

2/20/85 JK called w/ "own computer". Basic issue to [illegible] "[illegible]," [illegible] "7". Need lease of computer [illegible]

2/22/85 Harry G. has my cc of bankruptcy petition

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General meeting of creditors scheduled for March 19 1P
Hearing [illegible] re [illegible] [illegible] [illegible]
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[illegible]

2/20/85 Telecon w/ Chuck Miller

Top 20 unsecured creditors meet on
Mon. 2/25/85 — We can't go!

Second meeting of creditors scheduled

/20/85 Telecon w/ Chuck Miller

Top 20 unsecured creditors meet on Mon. 2/25/85 — We can't go!

General meeting of creditors scheduled for March 19, 1985, 1P @ Hearing Room, 1st floor, Shoreham Bldg., 806 15th St. NW.

Miller said just because we're not listed were not at a disadvantage ... will list us if [illegible]

2/20/85 Telecon w/ Chuck Miller

Top 20 unsecured creditors meet on Mon. 2/25/85 — We can't go!

General meeting of creditors scheduled for March 19, 1985, 1P @ Hearing Room, 1st floor, [illegible] Bldg., 206 15th St. NW.

Miller said just because we're not lenders we're not at a disadvantage ... he'd list us if INSLAW hasn't ... generally confusing.

I told him that we'll counterclaim for Computer Center costs in the amount of 500-600K ... and that INSLAW still owes ~~[illegible]~~ of $80K.

Miller said that the

General meeting of creditors scheduled for March 19, 1985, 1P @ Hearing Room, 1st floor, Universal Bldg., 206 15th St. NW.

Miller said just because were not listed were not at a disadvantage... list as if INSLAW hasn't ... generally confusing.

I told him that we'll counterclaim for Computer Center costs in the amount of 500-600K... and that INSLAW still owes [illegible] of $80K.

Miller said that the current list of creditors is temporary and that a formal list will be filed later....?

2/20/85 JK called w/ "our comments". Basic issue... to [illegible]

[illegible]

I told him that we'll counterclaim for Computer Center costs in the amount of 500-600K ... and that INSTED still owes AP of $80K.

Miller said that the current list of creditors is temporary and that a formal list will be filed later .... ?

2/20/85 JK called w/ "our computer". Basic issue to Siemens [illegible] "[illegible]," "11" [illegible] "7". Need lines for computers.

[illegible]

2/22/85 Harry & Les my cc of bankruptcy petition. E

DEPOSITION
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Miller said that the current list of creditors is temporary and that formal list will be filed later .... ?

2/20/85 [illegible] called w/ "on computer". Basic issue to Stevenson [illegible] "[illegible]" "11" "7". Need [illegible] for computer [illegible]

2/22/85 Harry G. Lee my cc of bankruptcy petition. E

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074/15

5/2 Discussed MIT w/PR. She was against memo to BB. Meeting after Tyson/Ham. meeting OK.

5/2. Left msg. w/Donna (8:45) requesting meeting this AM w/Kennel.

5/2 Called OMISS — Back on AK. Discussed matter w/Mike — common concern of losing control of contract admin. (M.S. said Jim is very arrogant.)

M.S. said T/H meeting is about USA Pitt remarks to INSLAW team leader re apparent INSLAW bankruptcy. M.S. said he thinks info came from USA/CA - Steve Trott, who may have gotten info. from Klaus. Trott apparently made some statement(s) in front of all USA Hq's @ ... CA(?)

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Videnieks

PENGAD Bayonne, N.J.

074/15

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P-R-O-C-E-E-D-I-N-G-S

Whereupon,

STANLEY M. SALUS

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COOPER:

Q. Good morning, Mr. Salus. My name is Dean Cooper. I represent the Department of Justice and the United States of America in the Inslaw bankruptcy proceeding. Your deposition is being taken this morning by consent of the parties.

Would you please state your name for the record.

A. Stanley M. Salus.

Q. Where are you currently employed, Mr. Salus?

A. With the firm of Docter, Docter and Salus, a PC.

Q. Are you one of the named partners in that firm?

A. I am a principal in the firm.

Q. How long have you been affiliated with that law firm?

A. Since 1974.

Q. In connection with the Inslaw bankruptcy litigation, is it correct that you have been one of the counsel of record on the Inslaw bankruptcy matter?

A. That is correct.

Q. Have you represented Inslaw from time to time in that capacity in court?

A. From time to time that is correct, although I would say within the last 6 to 12 months my partner, Charles Docter has been the principal counsel. I have had very little to do with it since that time.

Q. But you have been involved in that 6 to 12 month period?

A. Yes.

Q. Without revealing the substance of those discussions, have you had discussions with the Inslaw client regarding their claim concerning the Department of Justice?

A. I presume that I have within that 6 to 12 months. As I sit here I cannot tell you that I can recollect any specific conversations with them regarding the Department of Justice claim in the last six months.

Q. But have you generally been involved in strategy sessions in the last 6 to 12 months involving the Inslaw bankruptcy proceeding?

A. I think that is fair to say.

Q. You have not in any way removed yourself from the Inslaw bankruptcy litigation.

MR. O'NEILL: Objection, it mischaracterizes his earlier testimony.

THE WITNESS: I do think that mischaracterizes it. Because my participation level has diminished substantially in the last 6 to 12 months.

BY MR. COOPER:

Q. What is the reason for that?

A. The workload. We try not to duplicate the workload. My partner has become more involved because he had more time to do that. I have become less involved in the case because it did not require two of us and because my caseload has required participation in tort matters.

Q. When is the last time you recall appearing in court on behalf of Inslaw?

A. I can't answer that. I don't have a specific recollection of when that was.

Q. Would it have been any time within the past three months?

A. I don't think so.

Q. Within the last six months?

A. Other than a continued section 341 meeting scheduled by the U.S. Trustee's office, no. In actual court proceedings, I doubt that I have been to court for Inslaw within the past six months.

Q. During the last three months have you appeared for Inslaw at unsecured creditors meetings or general creditor committee meetings?

A. I think I have been to a committee meeting.

Q. Within the last 3 months?

A. Yes.

Q. Prior to the 6 months to 12 months period and for the record I will state I believe Inslaw filed for bankruptcy in 1978?

A. That is correct.

Q. Since the period Inslaw filed for bankruptcy is it fair to state that you have been involved in discussions with your clients concerning strategy in connection with its claim concerning the Department of Justice?

A. I think it is fair to say that I have been-involved in some discussions regarding the Department of Justice and probably strategy is overstating it. I was never involved, significantly involved in any of the Department of Justice discussions.

Q. Have you been involved in discussions with our counsel that have been retained by Inslaw in connection with the bankruptcy primarily handling the Department of Justice claims?

A. I am sure that I have talked to Leigh Ratiner once or twice but only once or twice and not as to any real substance, and my partner has handled that almost exclusively. By way of explanation so you will understand, this was not a purposeful happening. Many times Mr. Docter and I will start out on a case together because in the beginning the work is much more intense, but as we begin to put the case into some focus, as it begins to take some shape, either the one of us will spend more time on it and the other spending less time and eventually it will become the sole responsibility of either one of us. That is basically what has happened in Inslaw.

Q. Have you had any discussions with Mr. Stephen Kurtzman or any members of his firm in connection with the Department of Justice claim of Inslaw?

A. I don't believe so.

Q. What firm is Mr. Kurtzman with?

A. Nixon, Hargrave, Devans and Doyle.

Q. You have had no discussion with Mr. Kurtzman or any members of that firm?

A. No, definitely not.

Q. Have you been involved on any efforts on behalf of Inslaw to represent them in their claim for the Department of Justice?

MR. O'NEILL: I will object. I don't know the materiality or relevance of conversations Mr. Salus may have had relative to hiring other than lawyers for the proceeding for which this deposition is taken.

MR. COOPER: Your objection is noted. Can you answer?

MR. O'NEILL: I may instruct him not to answer.

MR. COOPER: I think it clearly goes to the question of the propriety of his testimony in this proceeding and the degree of involvement he has had representing the company he is prepared to testify on behalf of today. I believe that is a sufficient statement of materiality.

MR. O'NEILL: Go ahead.

THE WITNESS: Would you restate the question.

BY MR. COOPER:

Q. Have you been hired in connection with attempts to find trial counsel to represent Inslaw in connection with the trial of its claim against the United States and the Department of Justice?

A. No, I have not.

Q. Does the nature of your practice, Mr. Salus, involve bankruptcy proceedings that are pending in the

District of Columbia and in Virginia? Are those two areas where you practice?

A. I also practice in Maryland as well and from time to time I have a case out of town.

Q. In connection with your cases in Maryland, are those cases administered by the U.S. Trustee's office in Alexandria?

A. No, they are not.

Q. However, cases in the District of Columbia and Virginia are administered by the U.S. Trustee's office in Alexandria?

A. That is correct.

Q. Do you remember approximately when the U.S. Trustee's office in Alexandria was formed and when they began playing a role in the administration of bankruptcy cases?

A. I certainly do.

Q. When was that?

A. October of 1979 when the Bankruptcy Reform Act became effective. It was part of that Bankruptcy Reform Act that the pilot program of U.S. Trustee's was enacted.

Q. And you have practiced in the District of Columbia and in Virginia since October of 1979?

A. I have indeed.

Q. In connection with your representation generally in cases, do you represent both creditors and debtors in bankruptcy cases?

A. Yes, I do.

Q. In connection with cases where you have represented creditors, and I don't need you to identify specific cases, have you ever had occasions since October of 1979 to call the U.S. Trustee's office for any purpose?

A. In connection with cases where I represented creditors.

Q. Creditors?

A. I am sure that I have.

Q. On many occasions?

A. No, I wouldn't characterize it as many occasions.

Q. What would have been the general purpose, not case specific? Is it safe to say it would have been general informational questions that you would have posed to the trustee?

A. I think that is a fair statement. Sometimes I would provide information to the U.S. Trustee's office and sometimes I would request information.

Q. Do you recall calling the U.S. Trustee's office in any case where you represented a creditor to discuss the formal list of creditors that had been filed by a debtor?

A. No, I don't recall that at all.

Q. Is that something you would consider, however, to a be a legitimate area of concern to a trustee?

A. As a bankruptcy practitioner, that is not something I would generally call the U.S. Trustee's office. I would send someone to the courthouse to check the records directly.

Q. As a bankruptcy practitioner, what is your opinion as to the responsibility and functions of the United States Trustee in Alexandria? What role do they play?

A. They have certain statutory roles as set out in the code. Generally speaking, their role is to administer a panel of private trustees in Chapter 7 cases, to administer Chapter 11 cases to some extent. The extent of their role is certainly one that is in question with certain bankruptcy practitioners. By that I mean that the U.S. Trustee's office has carved out a larger role for itself than I believe many practitioners thought they would, because all of their duties are not specified in the code. As part of the role that they have carved out, they oversee fee applications, they oversee the formation of creditors' committees. They oversee the filing of schedules. They oversee the monthly reports. They oversee the payment of taxes. Those are some of the important areas where they exercise their administrative obligations.

Those are basically the duties I think they have carved out for themselves.

Q. With respect to the reference you just made to the concern on the part of local practitioners regarding what I think you referred to as an expanded role that the trustees have been playing in certain cases, were you referring to the role they played in certain Chapter 11 cases as opposed to certain Chapter 7 cases?

A. Yes.

Q. In connection with your representation of debtors in the District of Columbia and in Virginia, have you had occasions to have conversations with the U.S. Trustee's office in Alexandria?

A. Yes, I have.

Q. In representing a debtor that is something you would have need for frequent communication with the U.S. Trustee's office?

A. Frequent may be overstating it somewhat, but you have contact with U.S. Trustee's office in regard to every debtor case.

Q. In connection with the Inslaw matter, do you recall having any telephone conversations with any employees of the U.S. Trustee's office in Alexandria concerning the Department of Justice?

A. Yes, I do. I have had an opportunity to review my time records, and I have found that there were several early on in the case. If you would like, I would be happy to refer to them specifically.

Q. Before we do that, I would like to have the reporter mark the time records that you are referring to as Salus Exhibit 1.

[Salus Exhibit No. 1 marked
for identification.]

BY MR. COOPER:

Q. Salus Exhibit 1 purports to be the time records of SMS diaries from February 4, 1985 through February 28, 1985. Is that correct, Mr. Salus?

A. That is correct.

Q. Were these diaries prepared contemporaneously by you after these respective telephone calls or matters that you worked on?

A. That is correct. These are my diary entries. They are prepared almost immediately after the service is rendered. At the time that these diary entries were prepared, we were still using the method of dictating our diary entries, so if I had a conversation with someone over the telephone, when I finished that conversation, I would immediately pick up my Dictaphone and dictate the diary entry. These were all made contemporaneous.

Q. When you dictate, I assume a secretary types the dictation?

A. Correct.

Q. In connection with your diaries, do you then proofread your diaries and make revisions to those diaries or does Salus Exhibit 1 reflect verbatim what you dictated?

A. Very rarely do I proofread and edit my diaries.

Q. Do you recall during the time period February 4, 1985 through February 28, 1985 having edited or revised your diaries?

A. No, I do not recall editing them or revising them.

Q. You were going to go through the list and point out to me the respective calls that you received from the U.S. Trustee's office having anything to do with the Department of Justice?

A. On February 15, which is the fourth page, there is a telephone call from Chuck Miller. It refers to establishing new bank accounts which is a new requirement. We wanted to make sure there was insurance and then he said he wanted more background information on the Department of Justice dispute. He had received an indication that DOJ is very interested in the case.

Q. Am I correct that your logs reflect that the entire time of that telephone call lasted 15 minutes; is that correct?

A. That is correct.

Q. At the time that you received that call from Chuck Miller, were you knowledgeable about what is referred to here as the Department of Justice problem?

A. Only in a cursory way.

Q. Were you able to give Chuck Miller the information he requested in that telephone call at that time?

A. To the best of my recollection, I only gave him a cursory description of what I understood the problem to be.

Q. To the best of your recollection at this time, what was your understanding of the nature of the Department of Justice problem on February 15, 1985?

A. That the department had unlawfully

terminated a contract and owed the debtor an additional 1 million plus for fees earned under that contract.

Q. Does your log for February 15 reflect to the best of your recollection what Mr. Miller said to you on that date?

A. That is correct.

Let me add one other thing. At that time it was also my understanding that the Department of Justice dispute was fueled by the fact that there was an ex-Inslaw employee working at DOJ who was principally -- maybe I should not characterize it as principally but who was responsible to some degree for the termination of the Inslaw contract.

Q. I don't want you to reveal anything that is privileged but is it fair to say that you would have received that information from your client or someone affiliated with your client?

A. Yes.

Q. Did you tell that also to Mr. Miller?

A. I believe I did.

Q. What was the next call?

A. The next call was February 19. That was a call from Bill White who said there is substantial information in the Inslaw case from the Department of Justice. He would like more information so he could speak intelligently about the case and the dispute with DOJ.

Q. That telephone conversation on February 19 lasted 25 minutes?

A. That is correct.

Q. Bill White was the U.S. trustee in Alexandria at that time?

A. That is correct.

Q. Had you ever spoken with Bill White before?

A. Yes, I had.

Q. Bill White was somebody at that point you knew personally?

A. Yes, I did.

Q. Does that log of the call on February 19, 1985 reflect to the best of your recollection at this time what Mr. White said to you in that conversation?

A. Yes, it does.

Q. Mr. White asked you in that conversation for more information about the Department of Justice matter. Had you obtained more information about the Department of Justice matter upon February 19 than you had on February 15 when Mr. Miller had called you?

A. I cannot recall.

Q. Do you recall what you said to Mr. White when he asked you for that request?

A. No, I do not. I can only surmise that I probably gave him the same description of the dispute that I had given to Chuck Miller.

Q. Did that seem to satisfy Mr. White?

A. I think it did.

Q. Did he ask you if you would pursue the matter and obtain further information for him?

A. I honestly do not have a recollection of that.

Q. Do you recall having attempted to obtain more information about the Department of Justice dispute following February 15?

A. I have no recollection of that.

Q. What is the next matter concerning the Department of Justice?

A. I would add it was a little unusual for me to receive a call from Bill White on a case. That was not the norm.

Q. Why is that?

A. Because Bill rarely called about these debtor cases or about the administration of these cases. It would be one of his subordinates.

Q. Had you never received a call from Bill White prior to February 15, 1985?

A. Obviously, I can't recall but that may be close to accurate.

Q. Had you ever called Bill White in any of your cases prior to February 19, 1985?

A. I can't say. I am sure I have talked to him. I cannot stay whether I ever initiated a call to Bill White regarding any of our cases. It would be unusual for me to call Bill White about any of our cases. It would have to be a substantial problem. I would not start out by calling Bill White. I would have started out by calling one of the subordinates in the office.

Q. What is the next matter?

A. The next would be a February 21 telephone call from Chuck Miller where he inquired whether someone from Justice Management Division could observe the organization meeting of the creditor committee as that individual is helping install a case management system. At that time, I told him it was not a good - idea.

Q. And that telephone call on February 21 lasted ten minutes?

A. Approximately.

Q. Does that description of the call on February 21, 1985 reflect your best recollection at the present time as to what Chuck Miller told you on February 21?

A. Yes.

Q. Why was it that you told Chuck Miller you didn't think it was a good idea for someone from the Justice Management Division to observe the organizational meeting of is creditors' committee?

A. I honestly don't remember what was in my mind at the time. I can surmise several different theories. Most of all, it is simply inappropriate.

Q. Why is that?

A. Because the composition of the creditors' committee is supposed to be a select group of the largest creditors that are willing to serve on the committee. Outside influences are not welcome from the debtor's perspective.

Q. Your statement that you didn't think it was a good idea was a statement that was to reflect the debtor's view from the debtor's perspective. Is that correct?

A. Yes. Definitely. Obviously it was enhanced by the fact that we are dealing with a Department of Justice employee and that there is a dispute with the Department of Justice.

Q. In connection with your representation of other creditors in bankruptcy matters, have you ever seen ex-officio status on an unsecured creditors' committee?

A. No, I have not.

Q. On behalf of one of your creditor clients, have you ever attended a creditors' committee meeting where your client was not actually one of the sitting participants on that committee?

A. No, I don't believe I ever have, and I can't recall any committee that ever had any other creditor on it.

Q. Do you recall whether or not Chuck Miller told you in the February 21, 1985 conversation who - that individual was in the Justice Management Division who wanted to observe the meeting?

A. I don't recall.

Q. Have you ever conducted any investigation to ascertain who might have called Mr. Miller?

A. I don't recall if I did.

Q. Do you know from your experience as a bankruptcy practitioner whether a debtor's file of the list of 20 largest unsecured creditors is to include any governmental creditors?

A. I have to answer that slightly differently than you asked it. Generally, the list of top 20 is not to include governmental entities. However, the governmental entities that I believe was the intention of whoever drafted the rules that provide for the list of the top 20 creditors, my belief is that they had taxing authorities when they spoke with governmental entities. I am not sure as an academic matter whether or not governmental entities are creditors in the sense they were intended to be part of the top 20.

Q. What is the next reference in your diaries concerning the Department of Justice?

A. February 21 I had a telephone call from Bill Hamilton who told me that someone at the executive office of the U.S. Attorney told an Inslaw employee he was advised by the Office of the U.S. Trustee that Inslaw would not come out of Chapter 11 successfully. Bill was obviously very angry about that information. We discussed the interests of the Office of the U.S. Trustee in getting from the Department of Justice what was indicated by my earlier phone conversations. I also recall, although not stated here, that that information was told to the Inslaw employee in an attempt to hire away that Inslaw employee.

Q. You were told that by Mr. Hamilton?

A. I believe so.

Q. Did you ever conduct an interview of the Inslaw employee involved?

A. I did not.

Q. Did anyone else at your firm at that time conduct such an interview?

A. I don't believe so.

Q. You were dependent at least in this conversation upon what Mr. Hamilton told you?

A. Right.

Q. Did Mr. Hamilton provide you with any documentary information or any other information?

A. No, I don't believe so.

Q. Was Mr. Hamilton agitated at the time that you received this call? I think you said he was angry.

A. He was angry. I can't really recall whether he was agitated. I am not sure I know how to characterize that.

Q. But you know he was angry during that call?

A. I'll used the word incensed. I must have had that in mind.

Are you ready to go to the next call?

Q. No, not yet. After receiving Mr. Hamilton's call on February 21, what, if anything, did you do?

A. I have no recollection.

Q. I would like to ask you one more question about the February 21 call.

MR. O'NEILL: This immediate entry we are talking about?

MR. COOPER: Yes.

THE WITNESS: Let me amplify my last answer. The next telephone entry indicates I did discuss it with our co-counsel in the case, Glenn Gerstell of the firm of Milbank, Tweed, Hadley and McCoy.

BY MR. COOPER:

Q. Is this the reference on February 21, 1985, conversation that lasted 35 minutes?

A. Right.

Q. And it also concerned other matters as well?

A. Yes.

Q. You also discussed a motion for relief from stay filed by Boston Financial and the handling of AT&T?

A. Right.

Q. Then your reference refers to a problem with problem with the Justice Department?

A. I probably should have said and the problem with the Justice Department.

Q. What was the problem with the Justice Department?

A. To the best of my recollection, I was probably referring to the problem that had just been conveyed to me by Mr. Hamilton of an employee being told that Inslaw would not come out of Chapter 11. That is the best of my recollection. That is probably the problem I was referring to.

Q. To the best of your recollection when you spoke with Mr. Gerstell on February 21, 1985, had Mr. Gerstell already been informed of this allegation regarding the hiring of an Inslaw employee by the executive office of the U.S. Attorney?

A. I have no recollection.

Q. You might have mentioned it?

A. I may have been the first person but I don't know.

Q. If we can go back a moment, I don't know that I asked you this question, with respect to the reference on February 21, 1985, the 15-minute conversation with Bill Hamilton, does the description of that conversation reflect your best recollection as of the present time as to what Mr. Hamilton said on February 21, 1985?

A. Yes, it does except for the one additional part which I mentioned, that is, that this was said in an effort to hire away an employee.

Q. Other than that you don't recall any additional information as to what was said on that date?

A. No, I don't.

Q. As to the conversation also on February 21, the 35-minute conversation with Mr. Gerstell, do you remember any details as of this present time of your discussions with him concerning the Justice Department problem?

A. No, I don't.

Q. Would you like to go to the next reference?

A. The next reference is February 21 again and this is a telephone conference with Bill White, Glenn Gerstell, Larry Gesner, an associate in the Milbank firm. We advised Bill that a DOJ employee from the

Executive Office of the U.S. attorney told an Inslaw employee that the U.S. Trustee's office said Inslaw would not make it out of Chapter 11. We explained the problem with this kind of activity. Bill said he would investigate it and assured us his office would remain independent and not provide information to DOJ.

Q. Does this reference reflect your best current recollection of what was said to Bill White on February 21, 1985?

A. Yes, it does.

Q. Do you have any recollection of anything else being said by either party during that call on February 21, 1985?

A. I don't have any specific recollection of that right now. I have not really had an opportunity to reflect on it, but, as I sit here, no.

Q. During that telephone conference with Bill White do you recall whether Mr. Hamilton was listening in on that call?

A. No, I don't. I think I would have listed him if he listened in on the call.

Q. According to this description, it says you advised Bill Wright, an employee of the U.S. Attorneys Office told an Inslaw employee "said Inslaw would not make it out of Chapter 11."

A. Right.

Q. Had you spoken with the Inslaw employee who was involved by February 21, 1985 before you had this conversation with Bill White?

A. I don't have a specific recollection of doing so.

Q. Had you seen any documentation concerning anything that related to that allegation prior to this telephone conversation with Bill White on February 21?

A. I have no recollection of that.

Q. Do you have a recollection of either of these other attorneys, Glen Gerstell or Larry Gesner, having any other information as of the time of the telephone call with Bill White on February 21?

A. No, I don't believe -- I don't believe I recall any such thing. As you continue to ask me these questions, I keep wondering whether some time someone didn't talk to that employee and get either an affidavit or some written information.

Q. Who would that person have been?

A. I don't know, probably someone from Glen Gerstell's/ office.

Q. Why would it have been from your office rather than his?

A. Only because we were trying to divide the work and I was overwhelmed with the beginning of this Chapter 11 case. That is just very vague and I don't know if I have that confused with some other situation or not.

Q. Do you recall as of the present time having ever seen an affidavit of the employee involved or an draft of an affidavit for that employee?

A. I can't say that I do.

Q. You have no recollection so when you said that a minute ago --

A. I don't know if I am confusing it with some other situation but for some reason it just seems to me there should have been something. I honestly cannot say I have a specific recollection of seeing a written document anywhere.

MR. COOPER: I would request the pertinent files be searched to ascertain if this are any documents to this matter, whether draft or final that were prepared either for Mr. McKain or Mr. Hamilton or anyone else concerning this particular issue.

MR. O'NEILL: Do you want me to search his files?

MR. COOPER: If necessary.

BY MR. COOPER:

Q. Mr. Salus, I believe you have stated you did not prepare an affidavit. Is that correct?

A. That is correct. I think if I had it would be in my diary entry.

Q. Is it possible another attorney prepared and affidavit that this might also be contained in your files?

A. Is it possible?

MR. O'NEILL: I will take a look at his file.

MR. COOPER: Could you check with Gerstel and Gesner as well.

[Brief recess.]

MR. COOPER: Back on the record.

We just are returning from a short break. I would just like to state for the record so that it is clear that the United States and the Department of Justice is reserving any hearsay objections with respect to Mr. Salus' diaries notwithstanding my examination of Mr. Salus on the hearsay portions of Salus Exhibit No. 1. With that reservation, I would like to proceed.

BY MR. COOPER:

Q. Calling your attention again to the February 21, 1985 diary reference to the telephone conference with Bill White, do you recall what Mr. White said when told of this information during the conference call?

A. Other than what I put down here, I have no independent recollection.

Q. Was it your impression during that conference that Mr. White had been previously advised of this matter?

A. No, I don't think so.

Q. I say that only because my diary entry says he would investigate and get back to us?

Q. Was it your impression you believed what he said at that time?

A. I believe so. I have no independent recollection of how I felt about it at the time.

Q. On February 21 of 1985 there was a 10-minute conversation that you had with Bill White. Would you describe that?

A. Yes, this was his return call. He said he had talked to his staff and found that no opinions were given to DOJ regarding the viability of Inslaw. He promised that nothing other than the public record would be given to Department of Justice. He was confirming the independence of his office. I remember that he was very positive in his assertion of their independence and either at this time or a later time and I can't tell you exactly when, I remember it was as if I was insulting his integrity by making these calls. I don't know if it was in regard to this or both problems. I clearly remember when we discussed the confidentiality order that was later entered by the court that he clearly indicated at that time that he felt that I was insulting his integrity. I don't remember whether that same attitude carried through on this, but I believe it probably did to some extent.

Q. Do you recall anything else having occurred in that conversation other than what is regarded in your notes on February 21, 1985 reference?

A. I don't have a specific recollection. My notes are obviously a summary because the conversation was longer than it takes to read my notes.

Q. Do you have any recollection of what you might have said during that conversation with Mr. White on February 21?

A. No, I do not today have any specific recollection.

Q. Do you recall whether you said anything to Mr. White?

A. I certainly did say something to him. I am sure of that but I cannot tell you what I said.

Q. Do you have any recollection of telling Mr. White that you did not believe his representation that his staff had found that no opinions were given to Department of Justice?

A. No, I don't have any recollection of saying that.

Q. What is the next reference concerning the Department of Justice?

A. The next reference is February 25 which is a telephone call from Chuck Miller in which he advises-an attorney from the Department of Justice, Commercial Litigation Division insists on being present at the creditor organization meeting. Chuck said he could not be there but he said if the attorney would not leave voluntarily, it was Chuck's suggestion, if the attorney does not leave, he wants us to be prepared to hold the meeting in our conference room with only the members of the committee he appoints.

Q. Chuck Miller was the analyst in the trustees office that you referred to earlier?

A. That is correct.

Q. It states that Chuck was told he, and I assume that refers to this attorney from the Department of Justice, cannot be there; is that correct?

A. That is correct.

Q. Who told Chuck that this attorney from the Justice Department cannot be there? Was that something you told Chuck?

A. I believe that would have been me telling him. Incidentally, this diary entry is a good example of the fact that I did not edit these things because the punctuation is obviously wrong.

Q. I agree.

After you told Chuck that the attorney from the Justice Department could not attend the creditor committee organization meeting, that was when Chuck said he was not sure that the Justice Department attorney would leave voluntarily?

A. That is correct.

Q. Did he tell you that the Justice Department attorney intended to go even if Inslaw objected to it?

A. I believe he did say that or words to that effect.

Q. Did he say the Justice Department attorney may still want to go?

A. May still want to attend, yes.

Q. And what to do in that instance?

A. Right.

Q. Was there ever in attendance at this organizational meeting of the creditors committee by an attorney from the Department of Justice?

A. I don't believe so.

Q. Does the description of the conversation on February 25, 1985, the 15-minute conversation -- does that reflect your best recollection of what was said during that conversation?

A. Yes.

Q. The words here are the words to your best recollection that were used?

A. No. I think the words here may very well be my words in summarizing the conversation.

Q. Do you have any different recollection at this time as to specific words that were used that have a different suggestion than the description of the February 25 conversation?

A. No.

Q. On that same day, you also charged 30 minutes of time for research as to who can serve on a creditors committee? Is that correct?

A. Right.

Q. Was there ever in attendance at this organizational meeting of the creditors committee by an attorney from the Department of Justice?

A. I don't believe so.

Q. Does the description of the conversation on February 25, 1985, the 15-minute conversation -- does that reflect your best recollection of what was said during that conversation?

A. Yes.

Q. The words here are the words to your best recollection that were used?

A. No. I think the words here may very well be my words in summarizing the conversation.

Q. Do you have any different recollection at this time as to specific words that were used that have a different suggestion than the description of the February 25 conversation?

A. No.

Q. On that same day, you also charged 30 minutes of time for research as to who can serve on a creditors committee? Is that correct?

A. That is correct.

Q. Were you looking into the question as to whether or not the Justice Department could serve on the creditors committee?

A. I don't know. That is a fair presumption obviously in light of the earlier diary entries but I don't know.

Q. You don't recall?

A. I don't recall.

Q. What is the next reference concerning the Justice Department?

A. The next reference is on February 25 at a conference with Bill and Nancy Hamilton to prepare for the organization meeting of the creditors' committee and discuss the latest problems with the Department of Justice?.

A. What is the reference there to the latest problems with the Department of Justice? Do you recall if that was this matter of wanting to attend the meeting or was it something else?.

A. I presume that that is one of the problems that we discussed. I don't have a specific recollection. I also looked earlier and found that I don't have any notes of the meeting.

Q. What is the next reference?

A. The next reference is February 25. This is a telephone call with Larry Gesner and the last sentence of that entry states , "We also discussed continuing derogatory statements made by Department of Justice and the need to coordinate a strategy to stop such statements."

Q. Is Larry Gesner an attorney with the law firm of Milbank, Tweed?

A. He is.

Q. He is an attorney who works with Eliot Richardson?

A. Yes. He worked mostly under Glen Gerstel.

Q. In connection with the reference there, you also discuss continuing derogatory statements made by the Department of Justice. Were you aware or had you been provided with information regarding those statements prior to your conversation with Mr. Gesner?

A. I must have been.

Q. In other words, you recall having been advised of that before?

A. Right.

Q. Would that information most likely have come from Mr. Hamilton?

A. I believe so.

Q. Had you ever conducted any independent inquiry or investigation to ascertain the nature of any statements made by the Department of Justice aside from anything that Mr. Hamilton have told you?

A. No, I don't believe I did.

Q. Do you recall having discussed with Mr. Gesner a strategy to stop such statements?

A. It says I did. I do not have an independent recollection of what strategy we discussed.

Q. What is the next reference?

A. The next reference is February 25 and it is a telephone call from yourself, Dean Cooper, and you made that call to request that Inslaw return certain government-furnished equipment.

Q. Do you recall anything in more detail about that call, what the nature of the government-furnished equipment was?

A. No, I don't.

Q. Is this the only recollection that you have of that phone call?

A. Yes.

Q. Do you recall having discussed with me during that telephone call either the issue concerning whether someone from the Executive Office of U.S. Attorneys had tried to hire away an Inslaw employee or might have otherwise made statements regarding whether the trustees had said something like Inslaw won't make it in Chapter 11?

A. No, I don't. I had no recollection in that regard.

Q. What is the next reference?

A. I received another call from you on February 26, again about the government-furnished equipment.

Q. Does this help refresh your recollection as to what this matter was regarding the government-furnished equipment?

A. No, it doesn't.

I will say that my recollection is that somehow it was two small pieces. I don't know why I say two but I have in the back of my mind we are talking about two pieces of equipment that were not substantial, very expensive or anything like that.

Q. There is another reference noted on February 26 of a 15-minute conversation with Mr. Hamilton?

A. Yes.

Q. Would you discuss the pertinent portion of that?

A. The diary entry indicates that I discussed with him an action against the Department of Justice, and my recollection would be that we were talking about, I think, there was a board of contract appeals action pending at that time and we were probably discussing that to some extent.

Q. Following the call from Bill White that you received on February 21, 1985, did you ever learn of any subsequent actions by Mr. White to further explore the matter that you had asked him about?

A. I have no recollection of ever learning of anything further.

Q. I would like to call your attention to page 5 of your diary. There are two references here that I see that were skipped. Let's go back a moment to the entry on the 19th on page 4. If you look there, that was the conversation that you discussed on February 19 with Bill White where he stated there was substantial interest in the Inslaw case and the Justice Department and he would like more information so he can speak intelligently about the dispute with Department of Justice. I call your attention to a 25-minute conversation on February 21 of a conversation that appears to be that you had with Larry Gesner, in the middle of the page?

A. Middle of the same page?

Q. The next page, I am sorry.

A. Yes.

Q. Would you describe the pertinent portion of that.

A. We were obviously talking about several different matters, Boston Financial was a secured creditor or a leasing creditor. I can't remember which. We were talking about the revised cash flow in regard to AT&T. Let me rephrase that.

My recollection is that we had a cash

collateral order in connection with two banks. AT&T wanted some revisions to be sure that it did not impact on any of their interests. Then we discussed the dispute with the Department of Justice. I cannot recall as I sit here today what aspect of that dispute we discussed.

Q. On February 20 you had another conversation with Mr. Gesner. It says an attempt to call Bill White to discuss Department of Justice dispute?

A. Yes.

Q. Does that refresh your recollection as to what you and Mr. Gesner were talking about on February 20?

A. No. I presume although this seems to be out of order -- no, it doesn't. I don't know whether we were going to call him to provide him information, but his request for information didn't come until a day later. So the answer is I don't know what we were intending to do.

Q. I don't mean to mislead you, but I think his request for information came the day before, on February 19.

A. Where is that?

Q. On page 4.

A. With that said, it may well be that Larry Gesner who was more familiar with the Department of Justice matter than I was and I were going to call back Bill White and give him some background information on the Board of Contract Appeals aspect of it and the negotiations aspect of it through his office.

Q. When your reference on February 20 states that an attempt to call Bill White was made, does that refresh your recollection that you tried to call Mr. White and was unable to reach him?

A. That is correct.

Q. Then you subsequently did place a telephone conference to Mr. White on February 21; is that correct?

A. That is correct.

Q. Mr. Salus, we have been through your diaries which I believe you have stated in each instance reflect your best recollection of what occurred with certain additions on occasion. The answers to interrogatories that were provided to the United States states that, "Salus will also testify that Mr. White stated that he was under intense pressure from the Department of Justice on the Inslaw case in the period immediately following Inslaw's bankruptcy filing.."

Are you prepared to testify that Mr. White stated he was under intense pressure from the Department of Justice on the Inslaw case?

A. Intense pressure are not my words. It is clear from my diary entries that he was under some pressure from the Department of Justice. I would be prepared to testify he was under some pressure.

Q. To provide information; is that correct?

A. That is the way he expressed it to me.

Q. Do you have any other information?

A. No.

Q. As your diary shows, is it also fair to correct and does it fairly characterize the nature of these calls from Mr. White that substantial interest in the Inslaw case had been expressed to Mr. White by the Department of Justice?

A. That is correct.

MR. COOPER: May I have this marked as Salus Exhibit No. 2.

[Salus Exhibit No. 2 marked for identification.]

BY MR. COOPER:

Q. Would you look at Salus Exhibit No. 2 which appears to be a copy of a transmittal slip dated March 1, 1985 from Pat Frohman, Assistant U.S. Attorney to Mr. Brewer. Have you ever seen this document before?

A. I don't believe so.

Q. Do you know anything about that document from your first-hand knowledge other than just reading it?

A. No, I don't know anything about it.

MR. COOPER: I ask the reporter to mark as Salus Exhibit 3, a February 26 letter from Dean S. Cooper to Mr. Stanley M. Salus with a two-page attachment.

[Salus Exhibit No. 3 marked for identification.]

BY MR. COOPER:

Q. Mr. Salus, do you recall having seen Salus Exhibit No. 3?

A. Yes, I do. I recall this letter.

Q. Does this refresh your recollection concerning the matter you testified to previously concerning the government-furnished equipment on which you and I had conversation?

A. Yes, I think it does.

Q. What is your best recollection after having reviewed Salus Exhibit 3 as to what the government-furnished equipment matter concerned?

A. Well, I guess my recollection doesn't go beyond this document that it had to do with the items that are listed in this letter, and all I can remember is this modem for some reason.

Q. Why is that?

A. I knew what a modem was.

Q. Do you recall, Mr. Salus, that you and I subsequently entered into a stipulation that was filed in court regarding this matter after Inslaw gave its permission for the government to remove its computer in approximately the middle of March of 1985?

A. I have a vague recollection of that. I don't have a specific recollection of it.

Q. Do you recall who at the company, at Inslaw, reviewed the list of equipment and worked on this matter with you in connection with the government's request?

A. My recollection is that it would have been Nancy Hamilton.

Q. Is this your handwriting on the letter?

A. No. My handwriting does not appear anywhere on here.

Q. Mr. Salus, are you aware of any instances where any employee, principal or attorney of Inslaw met with Judge Bason concerning the Department of Justice dispute that was not on the record?

MR. O'NEILL: The dispute was not on the record.

BY MR. COOPER:

Q. Where there was a meeting with Judge Bason or a meeting with Judge Bason by any -- let me just restate that so we have a complete question.

Mr. Salus, are you aware of any instance since Inslaw filed for bankruptcy or prior to Inslaw filing for bankruptcy where any principal of Inslaw, any employee of Inslaw, any representative including attorneys of Inslaw met with Judge Bason or members of his immediate staff regarding the dispute between Inslaw and the Department of Justice that was not part of a proceeding that was held on the record?

A. No, I am not.

Q. You are not aware of any instance where Mr. Hamilton might have had lunch with Judge Bason prior to the filing of the adversary proceeding?

A. Definitely not. I would be shocked.

Q. Are you aware of any telephone conversations by attorneys, either yourself or other partners of yours to Judge Bason regarding the dispute with the Department of Justice which were not part of a conversation which was on the record in the proceeding?

A. No, I don't believe I am.

I did not participate. I have some recollections of something to do with the extension of time within which to retain the Nixon, Hargrave firm.

I don't know whether it was with Judge Bason or not, but I just remember there was some discussion of how to get that extension.

MR. COOPER: I have no further questions.

[The deposition was concluded at 11:30 a.m.]

I have read the foregoing pages 3 - 53 of my deposition and find the transcription to be accurate except for any corrections noted.

____

MICHAEL M. SALUS

Date ________________________

Sworn and subscribed to before me

this ______ day of _____________,

19_____.

____

Notary Public in and for

____

My Commission expires:

____

CERTIFICATE OF NOTARY PUBLIC/COURT REPORTER

I, Albert J. Gasdor, the officer before whom the foregoing proceedings were taken, do hereby certify that the deponent was duly sworn by me; that the testimony was stenographically recorded by me and, thereafter, reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the testimony given.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this proceeding, nor financially or otherwise interested in the outcome of this litigation.

ALBERT J. GASDOR

Albert J. Gasdor

Albert J. Gasdor
Notary Public in and for
the District of Columbia

My Commission expires:

July 31, 1990

DATE	TIME	CLIENT	DESCRIPTION
85/02/04	180	Inslaw, Inc.	Initial conference with Bill Hamilton, President of Inslaw. Full review of background information.
85/02/05	30	Inslaw, Inc.	Telephone Bill Hamilton (twice) regarding allocation of cash flow.
85/02/06	15	Inslaw, Inc.	Telephone Bill Hamitlon to schedule meeting at Glenn Gerstell's office.
85/02/07	120	Inslaw, Inc.	Conference at Glenn Gerstell's office with Bill Hamilton and Larry Gesner and Nancy Hamiltor to discuss Chapter 11 filing and things that m be done in connection therewith.
85/02/07	150	Inslaw, Inc.	Dictate initial pleadings for filing, inlcuding statement pursuant to Rule 2016(b), petition page, Exhibit A application to employ counsel including trips to Court to file the petititon and initial list of creditors.
85/02/07	40	Inslaw, Inc.	Miscellaneous telephone calls with Larry Gesne regarding Prince George's landlord and tenant action.
85/02/07	10	Inslaw, Inc.	Telephone Glenn Gerstell regarding notice to creditors of emergency application for use of cash collateral and application to be retained counsel.
85/02/07	15	Inslaw, Inc.	Telephone Larry Gesner to coordinate filing c application regarding cash collateral and notic to creditors.
85/02/07	75	Inslaw, Inc.	Conference at client's office with Bill Hamilto and Glenn Gerstell regarding effective filing and preliminary discussions regarding use of cash flow.
85/02/08	75	Inslaw, Inc.	Conference at Glenn Gerstell's office with Bi Hamilton and Murray Hannon to prepare for hearing on motion to use cash collateral.
85/02/08	195	Inslaw, Inc.	Attendance at hearing on motion for authorit to use cash collateral.
85/02/08	165	Inslaw, Inc.	Conference with Murray Hannon, Nancy Ham to discuss establishing new books and recor new bank accounts, weekly reporting requir to the secured creditors, montly operating r ports, preparation of statement of executory contracts, schedules and statement of affair

SALUS Ex. #1
3-27-87
Ⓑ

①

DATE	TIME	CLIENT	DESCRIPTION
85/02/10	30	Inslaw, Inc.	Review and revise application for extension of time within which to file schedules, and notice of automatic stay in Preudential case.
85/02/11	15	Inslaw, Inc.	Telephone conference James Robinson of C & P and Nancy Hamilton regarding requests for deposit by C & P.
85/02/11	15	Inslaw, Inc.	Telephone Larry Gesner of Millbank, Tweed, e to discuss suit by landlord of Prince George's County
85/02/11	15	Inslaw, Inc.	Telephone Nancy Hamilton to discuss request for telephone deposit. She has also received request for deposit from C&P for the watts line. I instructed her to study a monthly bill before we respond to a request.
85/02/11	10	Inslaw, Inc.	Telephone Nancy Hamilton. She does not yet ha the list of all known creditors, but promises it i being prepared. She will have Bill call to execut the new list of 20 largest unsecured.
85/02/12	15	Inslaw, Inc.	Dictated letter to Bill Hamilton forwarding letter from counsel for Micro Electronics; dictated lett to counsel for Micro Electronics advising that business of Inslaw is not in jeopardy.
85/02/13	15	Inslaw, Inc.	Telephone Larry Gesner to discuss proposed confidentiality orders.
85/02/13	20	Inslaw, Inc.	Conference with CAD to discuss problem of health insurance and recovery of offset made by Bank of Bethesda.
85/02/13	10	Inslaw	Telephone James Dimm, Vice President of Marketing to discuss his claim against the company.
85/02/13	20	Inslaw	Telephone Mrs. Murphy at C&P to discuss demand for deposit. Requested her to reduce deposit request and accept installment payments toward the deposit. She promises to review my request and get back to me tomorrow.
85/02/13	15	Inslaw	Telephone Ken Rosen. counsel for AT&T. ✓

Date	Time	Client	Description
85/02/13	15	Inslaw	Telephone Alan Sailor of U.S. Concorde, a creditor by reason of a lease agreement
85/02/13	15	Inslaw	Telephone Nancy Hamilton. She will send a copy of a papers regarding the bank loan. We discussed the situation regarding payment of rent. Advised her that I had received a call from James Gimm. She is to send the February check for health insurance.
85/02/14	10	Inslaw	Telephone Nancy Hamilton. List of all known credito should be completed today. She was requested by a creditor to pay a small outstanding balance. I instructed her to refuse in no uncertain terms.
85/02/14	15	Inslaw	Telephone Brian Rachlin (463-7256), attorney for a creditor. Wanted some information regarding the Debtor's status to report to his client.
85/02/14	10	Inslaw	Telephone Bill Hamilton. The debtor is represente Pettit & Martin generally for government contract problems and specifically in regard to the Departm of Justice problem.
85/02/14	15	Inslaw	Telephone Kathy Little of Pettit & Martin to discus the retention of her firm as special government contact counsel. She will prepare a draft applicati to be retained, for our review. Explained to her she can proceed to file the necessary appeal regar the Department of Justice decision, even though s has not yet been formally retained. Also explaine her how to keep her diaries.
85/02/14	15	Inslaw	Telephone Philip Mason-Off, realtor regarding Te Road property. Advised him of higher offer, $18 He will find out whether his client is willing to me that offer and let me know.
85/02/14	15	Inslaw	Telephone Mrs. Murphy at C&P. Her office is un to lower the request for a deposit of $25,000. Ho she is willing to take payments over a six-month equaling $4,166.66 per month, plus the normal te bill.
85/02/14	15	Inslaw	Telephone Criminal Justice Office. She was cerned about the completion of their contract. I assured her that the company is viable and inte complete the contract.
85/02/14	55	Inslaw	Conference with Bill and Nancy Hamilton to revi of all known creditors; proposed weekly accoun receivable report; proposed monthly cash recei

S.M.S. DIARIES

Date 1985	Time (H:M)	Client Name	Description
2/14	10	Inslaw	Telephone Mr. Koon, counsel for W. D. Campbell (furniture company) owed approximately $19,000. H needed some general information in order to report to his client.
2/15	15	Inslaw	Telephone Chuck Miller. He wanted to be sure new bank accounts were established and insurance was all in place. He also wanted some background on th Dept. of Justice problem, as he has received an indication that the Department of Justice is very interested in the case.
2/15	20	Inslaw	Telephone Jeremy Sachs at Lincoln National Life regarding group life and health insurance. He agreed that they will not lapse the policy, providing the company will convert to a 31-day grace period.
2/19	15	Inslaw	Telephone Ken Rosen, counsel for AT&T. He has ir inserted two additional paragraphs into Cash Collat Order, which he is Federal Expressing to us today His concern is that the liens of the banks are not construed to affect the property of AT&T.
2/19	60	Inslaw	Conference with Murray Hannon to discuss format of monthly cash position statements and the prepar of an application to retain him for accounting serv
2/19	20	Inslaw	Telephone Bill White. There is substantial interest the Inslaw case from the Dept. of Justice. Would more information, so that he can speak intelligentl the case and the dispute with DOJ.
2/20	15	Inslaw	Telephone Nancy Hamilton. Advised her health ins policy will not be cancelled. She says Larry Gesne handled Boston financial problem prior to Chapter She wanted some guidance regarding scheduling c creditors
2/20	15	Inslaw	Telephone Mike Schuchat, counsel for Temporarie He needed some information background regardin and probability of success for his client.
2/20	15	Inslaw	Telephone Mrs. Murphy at C&P. Agreed with her the debtor would make a deposit of $25,000, paya in six equal monthly installments commencing Mar 1985. She will send a letter confirming the arran
2/20	15	Inslaw	Telephone Nancy Hamilton. Advised her to be pr

Ⓤ

Date 1985	Time (H:M)	Client Name	Description
2/20	(Continuation)		to make first installment payment on deposit. She requested that I call regarding an accounts receivable that is being withheld because of the Chapter 11. We also arranged an appointment fo Bill and myself to prepare for the organization meeting of Creditors Committee.
2/20	15	Inslaw	Telephone He wanted some basic information on Chapter 11 filing. His court is a customer.
2/20	15	Inslaw	Telephone .regarding account receivable from He will authorize release of payment after he receives my letter stating that Inslaw is a Debtor in Possession.
2/20	15	Inslaw	Dictate letter to confirm that Inslaw is the Debtor in Possession and that payment of $36,000 should be ma immediately.
2/20	30	Inslaw	Review motion for relief from stay by Boston Financi
2/20	20	Inslaw	Telephone Larry Gesner to discuss background on Boston Financial; proposed revised cash collateral or entered by AT&T; and dispute with Department of J
2/20	10	Inslaw	Telephone Judge Bason's law clerk.
2/20	10	Inslaw	Telephone Larry Gesner to advise that the Judge's law clerk should be contacted as soon as he reviews cash collateral order presented by AT&T. An atte to call Bill White to discuss Department of Justice
2/20	20	Inslaw	Telephone Nancy Hamilton. She wanted to alert me a call from Software House that needs to be assure the company's liability and the antidiscrimination p sions under the Bankruptcy Code. We discussed inquiries we are getting from Micro Design about p purchase of Congressional business. Advised her had called the regarding paym the $36,000.
2/21	25	Inslaw	Review documents from U. S. Concord, Inc. rega lease of DecSystem Vax 11/780 Computer system.
2/21	10	Inslaw	Telephone Larry Gesner regarding cash collateral Bank of Bethesda is strongly opposed to the AT& of the order. The Debtor would be satisfied with order.

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S.M.S. DIARIES

Date 1985	Time (H:M)	Client Name	Description
2/21	10	Inslaw	Telephone Judge Bason's law clerk to advise that Bank of Bethesda strongly opposed to AT&T version of the cash collateral order.
2/21	15	Inslaw	Telephone Randy Waterfield from Arthur Young & Co. which company had been the auditors for Inslaw. The last audit performed was for the fiscal year ending September 1983. Arthur Young is willing to assist the Debtor in any capacity. Arthur Young still does the income tax returns. I agreed their retention should b authorized for the purpose of doing tax returns and a audit if required.
2/21	10	Inslaw	Telephone Les Nicholson of Health Care System, a customer. He wanted some assurance about the viabilit of the company and procedures under Chapter 11.
2/21	10	Inslaw	Telephone Chuck Miller. He wanted to know whether someone from Justice Management Division could obser the organization meeting of the Creditors Committee, a that individual is helping install a case management sy I told him I did not think that was a good idea.
2/21	15	Inslaw	Telephone Wallie Hamshire of ComCell, one of the twen largest unsecured creditors.
2/21	15	Inslaw	Telephone Bill Hamilton. Someone at Executive Office the U. S. Attorney's told an Inslaw employee that he advised by the Office of the U. S. Trustee that Insla would not come out of Chapter 11 successfully. Bill is incensed by this false information. We discussed the interest that the Office of the U. S. Trustee is gettin from DOJ.
2/21	35	Inslaw	Telephone conference Glen Gerstell and Larry Gesner to discuss handling of Motion for Relief from Stay fil by Boston Financial, the handling of AT&T, and a problem with the Justice Dept.
2/21	20	Inslaw	Telephone conference Bill White, Glen Gerstell and La Gesner. We advised Bill that a DOJ employee from the Executive Office of the U. S. Attorneys told an Inslaw employee that the "Trustees" said Inslaw would not m it out of Chapter 11. We explained the problem with this kin activity. Bill said he would investigate it and assurec that his office would remain independent and not pro information to DOJ.
2/21	10	Inslaw	Telephone Bill White. He has talked to his staff and that no opinions were given to DOJ regarding the vi

Date 1985	Time (H:M)	Client Name	Description
2/21 (continuation)			of Inslaw. He promises that nothing other than the publi record will be given to DOJ.
2/21	20	Inslaw	Telephone Nancy Hamilton. She is still having a problem If they do not contact us by tomo: she will give me the name of the individual to contact.
2/22	15	Inslaw	Dictated letter to Nancy Hamilton regarding U.S. Conco lease and forwarding copy of letter regarding formation of creditors conference. Dictated separate letter forwarding record searches from Maryland State Dept. of Assessments & Taxation.
2/22	10	Inslaw	Dictated letter to Mrs. J. Murphy to confirm telephone installment payments for deposit on phone bill.
2/22	10	Inslaw	Telephone Ms. Springs of Amoco Oil. She was referrec me by Inslaw. She says they can no longer use the car: because of the Chapter 11. The account is overdue 120 days, although the amount outstanding is only $177.
2/22	15	Inslaw	Telephone Nancy Hamilton regarding customer list and creditor that was left off the list of 20 largest unsecur creditors. It appears that creditor is only a contingent debt.
2/22	10	Inslaw	Dictate instructions to secretary regarding Steuart Thomsen, counsel for Digital Financial; dictate letter to Larry Gesner forwarding copies of pleadings.
2/25	15	Inslaw	Telephone Chuck Miller, an attorney from Dept. of Justice, Commercial Litigation Division. Insists on being present at the creditor committee organization meeting. Chuck was told he cannot be there, but he is not sure the attorney will leave voluntarily. If that is the case, he wants us to be prepared to hold the meeting in our conference room, with only the mem of the committee that he appoints.
2/25	30	Inslaw	Research as to who can serve on a creditors committee
2/25	15	Inslaw	Telephone Allen Sailer of U.S. Concord. He was concerned about the amount scheduled by the Debtor as the outstanding balance for his company's claim. I

S.M.S. DIARIES

Date 1985	Time (H:M)	Client Name	Description
2/25	15	Inslaw	Telephone Mr. Stowers of Baltimore Gas & Electric re- garding utility deposit. He is agreeable to six month deposit if we can manage to demonstrate that the amo of electricity use is going to go down.
2/25	90	Inslaw	Conference with Bill and Nancy Hamilton to prepare for organization meeting of creditors committee and discuss latest problems with the Department of Justic
2/25	195	Inslaw	Attendance at organization meeting of creditors commi tee. (3 hours, 15 minutes)
2/25	15	Inslaw	Telephone Larry Gesner to discuss letter from counse the Bank of Bethesda. We agreed any further discuss regarding the format of weekly accounts receivable reports should be handled by our office. We also dis cussed continuing derogatory statements made by De Justice and the need to coordinate a strategy to stop statements.
2/25	15	Inslaw	Telephone John Tucciarone, counsel for Boston Finan who wanted to know the status of the insurance and tenance.
2/26	15	Inslaw	Telephone David Davenport, counsel for Data Tel. D Tel would like to repossess two computers that are n being used.
2/25	15	Inslaw	Telephone Dean Cooper, attorney with Commercial Litigation Division of the Department of Justice. He wants the government furnished equipment returned March 8 and March 15.
2/26	15	Inslaw	Telephoned Nancy Hamilton regarding return of gov ment furnished equipment and proposal from Data T
2/26	15	Inslaw	Telephone Mr. Stowers of Baltimore Gas & Electric. agreed to a deposit of $10,000 payable at $2,000 a m commencing March 7.
2/26	15	Inslaw	Telephone Mrs. Kriznuski of Suburban Bank regard a Visa account

Date 1985	Time (H:M)	Client Name		Description
2/26	10	Inslaw	✓	Telephone Dean Cooper at Dept. of Justice. He would like a response as soon as possible regarding his request to recover government furnished equipment.
2/26	15	Inslaw	✓	Telephone Bill Hamilton regarding payment of rent; and meeting to discuss action against Department c Justice.
2/26	15	Inslaw		Dictate letter to Nancy Hamilton regarding record search in Prince Georges County.
2/27	.15	Inslaw		Telephone Nancy Hamilton deposit for C&P telephone; and analysis of Bank of Bethesda offset.
2/27	15±	Inslaw		Telephone Beth Huber of AT&T Communications. She wanted information regarding a filing. She did not request a deposit.
2/27	15	Inslaw		Telephone Ron Cain, counsel for Prudential Life Insurance, landlord at Lanham facility. His princip concern is the payment of rent directly.
2/27	25	Inslaw		Telephone Steve Leech. He has been contacted by Capital Systems to represent Capital and also the Creditors' Committee. We discussed the background of the case. We also discussed whether there woul be a conflict in representing Capital and the Comm He wants to know whether the Debtor would have a objection to that dual representation.
2/27	90	Inslaw		Review notes regarding services to be performed by Murray Hannon. Dictate application and order for retention of Murray Hannon to perform account services.
2/28	20	Inslaw		Dictate application and order to retain Arthur Young and Company.
2/28	30	Inslaw		Review and revise application and order to retai Murray W. Hannon
2/28	15	Inslaw		Telephone Nancy Hamilton, regarding preparatio of the Schedules; letter from Arthur Young & C and Data Tel.

DEPOSITION EXHIBIT
7 3/24/87
Brewer
PENGAD Bayonne, N.J.

ROUTING AND TRANSMITTAL SLIP

Date 3-1-85

TO: (Name, office symbol, room number, building, Agency/Post)

1. Mr. Brewer

copy this note

		☐ Note and Return
	☐ For Clearance	☒ Per Conversation
☐ As Requested	☐ For Correction	☐ Prepare Reply
☐ Circulate	☒ For Your Information	☐ See Me
☐ Comment	☐ Investigate	☐ Signature
☐ Coordination	☐ Justify	

REMARKS

Re: Inslaw Inc., Bky No. 85-0007

Attached is a copy of what has been filed so far in the Inslaw bankruptcy. There is a long list, and an amended list, of creditors, but I do not see Justic claim unless it is well disguised. Therefore under Bankruptcy Rule 30 (c)(2) also attached, Justice must file claim, within a time to be fixed by t Court.

DO NOT use this form as a RECORD of approvals, concurrences, disposals clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)
Pat Frohman, AUSA

Room No.—Bldg.
2124 G D.S.Ct

Phone No.
633-4979

5041-102

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

☆ GPO : 1980 O - 311-156 (17)

SALUS Ex. #2
3-27-87

14967

ROUTING AND TRANSMITTAL SLIP

Date 3-1-85

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Mr. Brewer RECEIVED		

Copy this note

		☐ Note and Return
	☐ For Clearance	☒ Per Conversation
☐ As Requested	☐ For Correction	☐ Prepare Reply
☐ Circulate	☒ For Your Information	☐ See Me
☐ Comment	☐ Investigate	☐ Signature
☐ Coordination	☐ Justify	

REMARKS

Re: Inslaw Inc., Bky No. 85-0007

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DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
Pat Frohman, AUSA	2124 G-O.S.C
	Phone No. 633-4979

5041-102

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

GPO : 1980 O - 311-156 (27)

[redacted]

Sens. Ex #2

☐ As Requested	☐ For Correction	☐ Prepare Reply
☐ Circulate	☒ For Your Information	☐ See Me
☐ Comment	☐ Investigate	☐ Signature
☐ Coordination	☐ Justify	☐

REMARKS

Re: Inslaw Inc., Bky. No. 85-0007c

Attached is a copy of what has been filed so far in the Inslaw bankruptcy. There is a long list, and an amended list, of creditors, but I do not see Justic claim unless it is well disguised. Therefore under Bankruptcy Rule 30 (c)(2) also attached, Justice must file claim, within a time to be fixed by t Court.

DO NOT use this form as a RECORD of approvals, concurrences, disposals clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Pat Frohman, AUSA

Room No.—Bldg.
2124 G U·S·Ct

Phone No.

(c)(2) also attacked, Justice / must file
claim', within a time to be fixed by th
Court.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post) Pat Frohman, AUSA	Room No.—Bldg. 2124 G O.S.C
	Phone No. 633-4979

5041-102

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

GPO : 1980 O - 311-156 (27)

[redacted]

SALUS Ex #2
3-27-87

14967

U.S. Department of Justice

DSCooper:deg

Telephone:
(202) 724-7183

Washington, D.C. 20530

February 26, 1985

HAND DELIVER

Mr. Stanley M. Salus
Docter, Docter & Salus
1612 K Street, N.W.
Suite 700
Washington, D.C. 20006

466-7940

Re: In re Inslaw, Inc.,
Bankr. No. 85-0070 (Bankr. D.C.)

Dear Mr. Salus:

To confirm our conversation of yesterday morning, the Government seeks Inslaw's consent to remove the Government-furnished "Prime" computer hardware from debtor's facilities which relates to the Department of Justice contract with Inslaw. That contract expires on March 15, 1985, and the equipment in question would normally be returned to the Government at that time. We would like your cooperation in permitting us to remove a few pieces of the equipment on March 8, 1985, and the remainder of the equipment on or shortly after March 15, 1985.

That equipment was furnished to Inslaw by the Government, which leased the equipment from another contractor, and is not the property of the debtor. I have enclosed a list of the Government-furnished property which we would like to remove. The five items which are denoted with asterisks is the property we would like to remove on March 8, 1985, and the remaining property on the list would be removed on or after March 15, 1985. At your request, I have enclosed excerpts from the contract which refers to the Government-furnished property.

I would appreciate it if you would call me with your response before the end of the day. If we cannot resolve this matter by agreement, I will need to file a motion for relief from the stay in the next few days. I look forward to hearing from you.

SALUS Ex. #3
3-27-87

Very truly yours,

DEAN S. COOPER
Trial Attorney
Commercial Litigation Branch

114551

CALL

Enclosures

Prime System #01 - Components in Possession of INSLAW, Inc.

The following items of government-furnished equipment are currentl located at the INSLAW data center - 9602 George Palmer Highway, Lanham Maryland:

Description	Quantity
Prime model 550-II CPU with 2 megabytes (MB) of memory	1
Prime/GE Telenet hardcopy system console & interface cable	1
Prime model 4471 300MB disk drive, with disk, controller, and interface cable	1
Prime model 4472 300MB disk drive, with disk and interface cable	1
Prime model 4522 800/1600 bpi tape drive with controller and interface cable	1
Prime model 3330 600 lpm band printer with unit record controller and interface cable	1
* Data Comm 9600 baud modem, serial # A04900538	1
* Stat Kat 12-port multiplexor, serial # 46603	1
* Prime CBL1469/1470 interface cables for terminals, printers and multiplexors	4

Videnieks says these cables are from the Prime to PCA mux

3/5 [illegible]

The following items of government-furnished equipment are currentl located at INSLAW's offices at Suite 600, 1125 15th Street, NW Washington, DC.

Description	Quantity
* Data Comm 9600 baud modem, serial # 37461	1
* Stat Kat 12-port multiplexor, serial # 4652	1
Beehive DM5 Plus terminals, serial # 5428 and 5429	2
Hi-G / Durawriter dot matrix printers, serial # 8200578 and 8310492	2
NEC letter quality printer, serial # 541532681	1

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF COLUMBIA

In Re: INSLAW, INCORPORATED Debtor	Bankruptcy Case No. 85-00070

Friday, March 27, 1987

Washington, D.C.

Deposition of GREGORY A. McKAIN was taken, pursuant to notice, before Albert J. Gasdor, a Notary Public in and for the District of Columbia, commencing at 11:35 a.m., in the law offices of Docter, Docter and Salus, Suite 700, 1325 G Street, N. W., Washington, D.C.

APPEARANCES:

On behalf of the Debtor:

MICHAEL J. LIGHTFOOT, ESQ.
Docter, Docter & SALUS
Suite 700
1325 G Street, N.W.
Washington, D.C.
Phone: (202) 628-6800

On behalf of the Department of Justice:

DEAN S. COOPER, ESQ.
Commercial Litigation Division
U. S. Department of Justice
Room 1212, Todd Building
550 11th Street, N.W.
Washington, D.C. 20530
Phone: (202) 724-7448

INDEX

Friday, March 27, 1987

Washington, D.C.

DEPONENT:	DIRECT	CROSS
Gregory A. McKain	3	--

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Deponent's Signatuare Page	61

P-R-O-C-E-E-D-I-N-G-S

Whereupon,

GREGORY A. McKAIN

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COOPER:

Q. Would you state your name for the record, please.

A. Gregory A. McKain.

Q. What is your residence address?

A. 991 Mount Holly Drive, Annapolis Maryland, 21401.

Q. Mr. McKain, where are you currently employed?

A. Inslaw, Incorporated.

Q. How long have you been employed at Inslaw?

A. About seven years and three weeks.

Q. Approximately late 1979?

A. March first of 1980.

Q. What is your current position at Inslaw?

A. I am a software manager in the product development and installation group.

Q. Inslaw filed for bankruptcy in approximately February of 1985; is that correct?

A. Yes.

Q. Were you aware of that when that happened?

A. Yes.

Q. What was your position at Inslaw at that time?

A. I was then technical manager and also the project manager for the project to automate the U.S. Attorneys offices.

MR. LIGHTFOOT: Say that again.

THE WITNESS: I was technical manager as well as the project manager at that point. I had assumed those duties toward the end of the contract.

BY MR. COOPER:

Q. Your role as technical manager and project manager related to Inslaw's performance under the contract that Inslaw had with the Department of Justice, Executive Office of U.S. Attorneys?

A. Yes.

Q. Who at the Department of Justice did you primarily have contact with in approximately February of 1985?

A. Either Jack Rugh or Mike Snyder, depending upon the nature of a problem. I would either call Mike or Jack. Jack was technical and Mike was administrative.

Q. Can you recall what your salary was in 1985 when you were the technical and project manager?

A. It may have been close to $35,000.

Q. Per year?

A. Yes.

Q. Since February of 1985, what other positions or promotions did you obtain since that time at Inslaw?

A. The only real promotion was to software manager.

Q. Your current position?

A. My current position.

Q. When did you obtain that promotion?

A. It was in July of 1986, I believe.

Q. Did that promotion take with it a salary increase as well?

A. Yes.

Q. Prior to that salary increase in July of 1986, was your salary approximately $35,000?

A. No, it was higher then. I received an increase in about July of 1985.

Q. In July of 1985, do you recall how much you were earning?

A. Mid-40's.

Q. Was that about $43,000?

A. Actually, I think I went from $35,000 to $40,000 to $45,000 to my current salary.

Q. So you were earning $45,000 as of July 1985?

A. That is correct.

Q. How about in July of 1986? What was the salary increase that you received upon becoming the software manager?

A. It was increased to $50,000.

Q. Is your salary $50,000 as of the present time?

A. Yes.

Q. Following Inslaw's bankruptcy filing, were you issued any stock in the company?

A. No.

Q. Do you hold any stock in the company?

A. No, I do not.

Q. Have you been offered any profit-sharing arrangement in the company?

A. No.

Q. In approximately February of 1985, what task were you working on in connection with the Justice Department contract?

A. We were wrapping up the last two sites that needed to have software delivered and the delivery was waived and the only thing we needed to supply was a tape of finished software product as well as documentation.

Q. What were the last two sites?

A. One was the Virginia district which was headquartered in Alexandria and I think the second one was in Ohio. I think it was Cleveland or Columbus. I am not sure.

Q. Did this pertain to the installation of PROMIS on a computer as opposed to a word processor?

A. Yes.

Q. Were these two sites instances where the computer was actually located at the U.S. Attorneys' office?

A. As far as I know, it was at the U.S. Attorney's Office.

Q. Were you at involved during February of 1985 in providing time-sharing support to any of the U.S. Attorney's offices?

A. Only in a minimal nature in that if they had an application problem, I would handle it, but not if it was hardware or communications-related.

Q. Do you recall when you first became aware that Inslaw had filed for bankruptcy?

A. Yes, it was a meeting held at Inslaw attended by all the employees who were present. I am not sure of the exact date but sometime in early February of 1985.

Q. Was it on the date that Inslaw filed for bankruptcy?

A. I believe it was on the date. It was an afternoon meeting and I think the filing took place in the morning.

Q. Do you have any recollection of having any concern or impression prior to Inslaw's bankruptcy filing that Inslaw might go into bankruptcy?

A. Not really. I had no belief that we would file for bankruptcy. Times were not high on the hog but we had never filed before, and I had been through ups and downs before so I had no real belief they were filing for bankruptcy protection.

Q. Prior to February of 1985, do you recall numerous ups and downs concerning the company's financing?

A. A few people were let go at different points in time. I don't recall dates.

Q. Do you recall the company not being able to meet a payroll because of a cash shortage?

A. I personally never missed one.

Q. Do you remember prior to February, 1985 employees were instructed to accelerate the billing of time to submit vouchers on contracts to improve cash flow?

A. No, I was not aware of anything of that nature.

Q. Who participated in that meeting in early February, 1985 at which you learned of Inslaw's bankruptcy filing?

A. There was a lawyer present. I believe it was Glenn Gerstel who just spoke briefly about what Chapter 11 would mean to the company and what actions would be taking place over the next period of months or so, fairly general terms, just someone will file something and respond and it will go back and forth for a while with the ultimate goal being the reorganization of the company.

Q. Did anyone else speak at that meeting?

A. I think Mr. Gerstel and maybe Bill Hamilton introduced him. I don't recall another speaker.

Q. Other than introducing Mr. Gerstel, did Mr. Hamilton say anything at that meeting?

A. I can't recall if he said anything.

Q. To the best of your recollection, that was the day of or the day after Inslaw's bankruptcy filing?

A. It was very close to the time of filing.

Q. Was anything discussed during that meeting in early February of 1985 regarding the Justice Department contract?

A. No, not not to my recollection.

Q. Do you recall any discussions prior to February, 1985 regarding the Justice Department contract and allegations of bias concerning Justice Department officials?

A. Discussions in a group or just being aware of possible conflict?

Q. Did you ever discuss allegations of bias with any other employee?

A. No.

MR. LIGHTFOOT: Isn't this outside the scope?

MR. COOPER: I think it is material. I want to know what information Mr. McKain had and what kind of discussions he had about the allegations of bias solely to establish a basis that might create a bias on his part. I am not going to get into it too deeply.

BY MR. COOPER:

Q. Have you ever had discussions with Mr.

Hamilton regarding allegations of bias on the part of Justice Department officials?

A. I don't know about bias on the part of officials. I was aware of payments, I believe, to the computer center, a conflict, and some kind of method that we were supposed to be paid for time-sharing.

Q. You were advised there was some kind of contractual dispute?

A. Yes.

Q. Did Mr. Hamilton ever tell you Brick Brewer was biased because he had fired Brick Brewer?

A. No.

Q. Did Mr. Hamilton tell you that he didn't like Jack Rugh?

A. I didn't know Brick was a former employee until after the bankruptcy was filed.

Q. How did you learn of that?

A. I don't even know who the person was. Somebody said Brick worked at Inslaw.

Q. Has there been a lot of discussion at Inslaw since the bankruptcy filing regarding the allegations of bias or the lawsuit that Inslaw has filed against the government?

A. Besides updating company personnel on the status of Chapter 11, no, not really.

Q. Are there periodic updates to the personnel regarding the status of Inslaw's bankruptcy filing?

A. Generally, we may have a meeting for a birthday or whatever and Bill will bring people up to date, this has been filed or extensions granted by the Bankruptcy Court, the right of exclusivity and that was the main concern of the employees.

Q. Approximately how frequently do such meetings occur?

A. That we are informed of anything involving bankruptcy?

Q. Yes, that is correct.

A. Maybe once every other month or maybe once every three months. We have regular meetings.

Q. At any of those meetings, has Mr. Hamilton or anyone else discussed the specific allegations of bias regarding the Justice Department officials or employees?

A. No, I think mainly the lack of funds

supplied to Inslaw on the contract.

Q. Do you ever recall having the impression or having been informed that the very survival of Inslaw is dependent upon Inslaw winning its lawsuit against the Department of Justice?

A. No, I don't think that has ever been presented to me.

Q. Do you recall following Inslaw bankruptcy filing having discussions with Justice Department employees regarding Inslaw's ability to come out of a Chapter 11 reorganization?

A. Following the filing?

Q. Following the filing.

A. Yes.

Q. Approximately what is the first meeting or conversation that you recall with the Justice Department employee regarding the bankruptcy filing or Inslaw's ability to survive bankruptcy?

A. It was a call from Jack Rugh which shortly followed our filing, probably within days of the filing.

Q. That was the very first person at the

Justice Department that you spoke with concerning the bankruptcy matter?

A. Yes.

Q. You are absolutely certain of that?

A. Yes.

Q. You have searched your notes? Have your notes been made available to you from that period to review?

A. I have not reviewed my notes for that period.

Q. What have you reviewed to prepare for giving testimony today?

A. Mainly my telephone log and conversation with Jack Rugh.

Q. A single-page document?

A. Yes.

Q. Have you requested an opportunity to look at any of your other documents from this period?

A. No.

Q. Was it your practice during that period to keep a telephone log that recorded all of your conversations that you had?

A. I tried to record every call I had with Justice regarding the contract.

Q. Do you recall Mike Snyder having discussed with you the Inslaw bankruptcy filing following Inslaw's filing for bankruptcy?

A. Not the bankruptcy. He requested a list of creditors. I took no action because I did not feel it was my responsibility to supply him with that information.

Q. Did that conversation occur before the conversation request of Jack Rugh?

A. Just after.

Q. Did he request you send him a copy of the creditors' list?

A. Or if I could obtain a list of creditors for him.

Q. Do you have any recollection of him saying anything else?

A. No, it was a very short conversation--how are you doing? Can you get me this information? I said I will see. Thank you.

Q. Your recollection today is that call did not occur until after Mr. Rugh's conversation with you?

A. Yes.

Q. Do you have any recollection of Mr. Snyder ever stating to you that in his opinion or in the opinion of others at the Executive Office of U.S. Attorneys that Inslaw couldn't make it in a Chapter 11 and would be liquidated?

A. No.

Q. Did you know the difference between a Chapter 11 and Chapter 7 in February of 1985?

MR. LIGHTFOOT: I will object on the grounds it is not specific enough as to what portion of February.

BY MR. COOPER:

Q. Did you learn of the difference of a Chapter 11 and Chapter 7 in the meeting of Mr. Gerstel?

A. No, I was aware of that prior to that, very superficially.

Q. Your understanding is a Chapter 11 is what?

A. The company proceeds as it has been. It is not a locking of the doors situation.

Q. Chapter 7 is what?

A. The doors are locked and creditors are paid off.

Q. Can you describe to the best of your recollection your conversation with Mr. Rugh.

First of all, when did it occur?

A. Within a short period of time following our filing for Chapter 11.

Q. Can you put your finger on the precise date?

A. I could not give a precise date.

Q. Was it before or after the meeting with Mr. Gerstel?

A. I think it was after the meeting with Mr. Gerstel.

Q. Do you recall how long after?

A. I think it may have been the day after. There were several phone calls following the filing, within a day or two, people wondering if we are going to stay at Inslaw.

Q. Do you recall the date that Inslaw filed for bankruptcy?

A. If I had al calendar of that year I could probably figure it out. I know it was a Thursday in early February.

Q. What was the nature of the conversation with Mr. Rugh? Did you call him or did he call you?

A. He called me.

Q. Had you called Mr. Rugh prior to that? Was he returning a call to you?

A. No.

Q. So Mr. Rugh was just calling you?

A. There was very little activity on the project since it was very much towards the end of the contract.

Q. What happened during that call?

A. He said to me, "We have talked to trustees who said Chapter 11 won't go."

Q. That is the first thing he said to you?

A. Those were basically the first words out of his mouth and we would probably have to go to Chapter 11 within 30 to 60 days.

Q. He said you would have to go to Chapter 11 within 30 to 60 days, or was that your impression?

A. It was my impression that is what he found out from whatever trustees he talked to.

Q. What else did Mr. Rugh said?

A. The rest of the conversation dealt with the possibility of me being employed by the Justice Department.

Q. What specifically did he say in connection with your potential employment?

A. He covered what would be necessary for me to be employed by the Justice Department, that depending upon the size of the contract I would sign, anything under $25,000 could be arranged for a maximum six-month contract with the Justice Department.

Q. Prior to that discussion with Mr. Rugh, had you ever discussed the possibility of employment or a contract with the Department of Justice before?

A. Yes.

Q. When did you first begin to discuss that?

A. That is very hard to be exact, but it was at least two years prior to our filing Chapter 11.

Q. Was that a discussion that you had initiated?

A. No. Initially, it was do I feel like leaving? Do you feel you would like to work here. It not only came from Jack Rugh but various employees within the Department of Justice.

Q. Did you have any interest in that contract at that time?

A. Maybe initially, yes, but by the end of the contract, I had been five years on the same project and I really had no desire, if I could help it, to continue on that same software application.

Q. Am I correct in saying that when the discussions were first initiated, you were interested at least for a period during which those discussions occurred?

A. Yes.

Q. What point was it that you were no longer interested?

A. I don't think I at any one point became no longer interested in working there. My preference for working there, however, went down considerably towards the end of the contract, just when I felt tired of working on the same thing and dealing with the same people.

Q. At the end of March, you were no longer interested in working for the government when the contract terminated? I am trying to place a time.

A. There was no real specific change.

Q. Was it before or after the bankruptcy filing?

A. Before.

Q. So sometime before the bankruptcy filing, you in your own mind were no longer interested in a contract with the government?

A. My interest was greatly reduced from what it had been.

Q. Do you recall having told Mr. Rugh or any other employee of the Justice that you were not as interested in employment or a contract as much as you had been before?

A. No, it is my personal policy not to say I am not interested, since I don't know what might happen next week.

Q. There were conversations before this conversation with Mr. Rugh in February of 1985 that perhaps continued over a period of at least two years where you had discussed with the Justice Department the possibility of employment or a contract; is that correct?

A. I would say full-time employment, not for a contract but for full-time employment.

Q. Was it your understanding that you wouldn't be working on providing maintenance?

A. At which point in time, prior to my call from Jack Rugh?

Q. Was there a time that you were talking with the Justice Department about either as an employee or as a contractor providing maintenance services to the Department of Justice?

A. The only time that was brought up was in Jack Rugh's phone call.

Q. That was the first time?

A. That is the first time maintenance was discussed or a specific list of duties was discussed.

Q. What do you recall before that call you would have been doing?

A. Basically, in my capacity in my work at Inslaw, technical supervision and installing projects.

Q. What did Mr. Rugh tell you about

maintenance?

A. During his telephone call?

Q. Yes.

A. Not much specifically except some maintenance and retailoring and some maintenance in a six-month contract.

Q. Do you recall Mr. Rugh mentioning in any conversation with you that the Department of Justice had asked Inslaw to submit a proposal to the government for performing maintenance services for the period after March of 1985 but that Inslaw had not submitted such a proposal?

A. Not to my recollection. I was aware of such activity but not through Jack Rugh.

Q. Have you ever had any conversations with the United States trustee?

A. No.

Q. What is your best recollection of what your knowledge regarding the trustees was in February of 1985?

A. At the time of that call when he mentioned the word trustee, I had no idea what a trustee would be.

Q. Do you have a recollection that you really didn't have any idea what he was talking about?

A. I knew trustee as in maybe a released prisoners trustee and I knew it was some type of custodial time situation, but I had no direct knowledge of any trustee that would have been involved with Inslaw, so I was kind of surprised.

Q. Were you confused by his call?

A. Not really confused. I was concerned by his call.

Q. Your recollection is that the very first thing he said in placing that call after perhaps saying hello was that we have spoken to the trustees and they have said that Inslaw cannot make it in Chapter 11 and will probably become a Chapter 7?

A. Yes.

Q. Were you surprised by the abruptness of that statement?

A. Yes.

Q. How long did that call with Mr. Rugh last?

A. No more than 10 or 15 minutes. It was a fairly short call. He gave me the particulars as to what would need to happen for me to have a contract with the Justice Department and what would be involved, and that was basically about it.

Q. Did you tell him at that time you were not interested in a contract with the Justice Department?

A. No.

Q. You were interested?

A. Particularly when he said we would not survive Chapter 11.

Q. Did you receive another call subsequent to that call from Mr. Rugh following up on his offer of employment?

A. I can't specifically give a date. I kind of remember talking to him after that and my answer was, well, I am Inslaw and I will just stay at Inslaw.

Q. What did Mr. Rugh say?

A. Fine, thank you, because one of the provisions on the six-month contract was they would be able to go to sole source due to my extensive knowledge of the contract and they could not do that as long as Inslaw existed.

Q. He explained this to you during the second call?

A. No, during the first call. Inslaw insisted they could not go sole source.

Q. Had he told you similar things in the prior two-year period when you were discussing the possibility of an employment contract?

A. No. At that time, it was all discussions regarding full-time employment.

MR. COOPER: Let me mark McKain Exhibit No. 1, a copy of what appears to be notes in your handwriting. I will ask that be marked.

[McKain Exhibit No. 1 marked for identification.]

BY MR. COOPER:

Q. Do you recognize the handwriting on that Exhibit?

A. Yes.

Q. What is McKain Exhibit 1?

A. This is the log of my telephone conversation with Jack Rugh that day.

Q. You say a log. Is this a log or notes?

A. This was more a personal note because it was not really project-related.

Q. You kept this separate from your project notes?

A. Yes. I had a blank yellow pad on my desk and, at that time, I was conditioned every time I talked to someone from Justice to get out my pencil and write down notes.

Q. Why was that?

A. Probably due to the intensity of the project. We were implementing various sites close on the heels of one another and keep a log site by site and date by date and whether it was a software problem, a personnel problem, just a general question on the use of the application, I like to keep a chronological log of who not only in the Washington office of the Department of Justice called.

Q. Were you also instructed to keep a log of what Justice Department people said because there was a dire need to build a record regarding allegations of bias?

A. No.

Q. Can you tell me at what time this call was received?

A. 9:45.

Q. That would have been a.m.?

A. Yes.

Q. You don't know what date?

A. No.

Q. Have you made any efforts to ascertain what date this occurred?

A. I believe it was the day following the filing for Chapter 11.

Q. Have you ever seen a different copy of this where you could tell me what those notations are above that first line? It looks like something was circled there.

A. That was a note that Jack Rugh would be at the Pentagon for two weeks starting Monday. If I had the note that it was starting Monday, that would almost pinpoint us to the day or two of filing the Chapter 11.

Q. Where is the original of this note?

A. It may be in Inslaw's files.

MR. COOPER: I would request and restate for the record that I be provided with the original of this handwritten note. Could you check that?

MR. LIGHTFOOT: Sure, it may be over here. They can't find the original.

MR. COOPER: They can't find it or they don't know?

MR. LIGHTFOOT: They can't find it.

MR. COOPER: During the off the record portion, counsel has just related to me in response to my request that the original could not be found. Is that correct, Mr. Lightfoot.

MR. LIGHTFOOT: Yes.

MR. COOPER: Has a search been performed to ascertain that?

MR. LIGHTFOOT: After I talked to you at ten o'clock this morning, I asked them to check to see if they could find the original, and I was just told me couldn't find the original. That is the state of my knowledge.

BY MR. COOPER:

Q. Mr. McKain, at the top of the page there, were you keeping a verbatim account of what Mr. Rugh said?

A. No, not particularly. He said "we" talked to trustees and I translated that to "they" talked to trustees.

Q. Other than that, do you keep notes in a verbatim form or do you kind of summarize?

A. I attempt to summarize what has been said.

Q. And these are summaries in part?

A. Probably except for the first two lines and that is practically verbatim.

Q. How do you know that?

A. I recall that. It hit me like a ton.

Q. What do those first two lines say, first of all?

A. They talked to trustee who say Chapter 11 won't go; probably Chapter 7, 30 to 60 days.

Q. Why is trustees circled?

A. Because I wondered what a trustee had to do with Inslaw and not survive Chapter 11.

Q. Do you recall whether you circled trustees at the time that you were writing these notes?

A. Yes, I did.

Q. How about the 30 to 60 days?

A. That was my timeframe. If we are involved, I want to have a resume prepared and do some job hunting.

Q. Your clear recollection is trustees said Chapter 11 won't go, probably Chapter 7?

A. I think were some goings-on mixed in there in between which I did not write down.

Q. Did Mr. Rugh to the best of your recollection express his personal opinion that Inslaw could not reorganize?

A. Not particularly at that point.

Q. Do you ever remember Mr. Rugh expressing his personal opinion that Inslaw could not reorganize?

A. No.

Q. What does the next line say?

A. Six-month contract for me, responds to RFP, below 25K, not so much of a problem. They could go sole source since I know most of what happened in contract. Regarding 171 form would not be required. At that point is when he told me as long as Inslaw exists, a sole source cannot be used to obtain my services. He did a statement of work that would be involved. I would have to have a letter to Pete Videnieks to respond to and there was some question whether there would be a fixed price contract or an hourly contract. He then detailed what would probably be involved in the training, tailoring and maintenance operation.

Q. Did you state your recollection was that this call lasted approximately 15 minutes?

A. No longer than 15 minutes.

Q. Is it possible it was shorter than 15 minutes?

A. It could have been 10 minutes.

Q. What does this mean, "MS called"?

A. 2/15/85 and he requested a list of creditors.

Q. When was that?

A. After Mr. Rugh's call.

Q. Why did you put that on the notes of Mr. Rugh's call?

A. The pad was still on my desk from that call.

Q. Do you recall how long after Mr. Snyder's call you spoke with Mr. Rugh?

A. Mr. Rugh called first. Then I spoke to Mr. Snyder.

Q. Does this refresh your recollection that the call with Mr. Rugh occurred before February 15 of 1985?

A. Yes, sir.

Q. Do you recall whether or not Michael Snyder called you on the same day you spoke with Mr. Rugh?

A. No, it was definitely after the day I had spoken to Mr. Rugh.

Q. How many days after?

A. I have no recollection. The pad was still on my desk so it had to be within a week after I talked to Mr. Rugh.

Q. Your recollection is the pad was still on your desk and still turned to that page?

A. Yes, I think that is why I circled that Mike Mike Snyder called because I wanted to keep it separate.

Q. Your recollection is there was a period of two to three days in between Mr. Rugh's call and Mr. Snyder's call?

A. Yes.

Q. That would have put Mr. Rugh's call on the 12th or 13th?

MR. LIGHTFOOT: He said it occurred before that date, not on either of those dates. I think you are mischaracterizing his testimony. I think the confusion is Mr. McKain indicated it occurred before a period of two to three days before the Mike Snyder phone call and you are placing it on one of those two dates.

MR. COOPER: That is a fair objection.

BY MR. COOPER:

Q. What did you do after having spoken with Mr. Rugh? Had you spoken with anyone about Mr. Rugh's call?

A. Yes.

Q. Who?

A. Mr. Hamilton.

Q. When did you do that?

A. Immediately.

Q. What did you say to Hamilton?

A. That I just talked to Jack Rugh who told me we weren't going to make it and I wanted to know from Mr. Hamilton, are we going to make it.

Q. Is it fair to say you confronted Mr. Hamilton?

A. Yes.

Q. That was minutes after your call?

A. Yes.

Q. That was in the morning?

A. Yes.

Q. What else did you say or what did Mr. Hamilton say after you told him that?

A. He just reassured me that it is impossible almost, too many things need to happen within 30 to 60 days, that he was confident the company would not fold in that time period.

Q. Did you say anything more to him?

A. I just reiterated my concern that I be told really what is happening and not have a snow job laid on me--yes, it is fine--and one day I come in to work and the doors are locked.

Q. What did he say to that?

A. He said we were not going to fold.

Q. Were you reassured?

A. I was somewhat disturbed there was someone from outside the company said you are going to fold within this timeframe, yet employees as a whole and myself personally after I confronted Mr. Hamilton was assured we would not fold.

Q. Did Mr. Hamilton ask you to write a memorandum to him outlining what Jack Rugh had said to you or anything like that?

A. Not at that meeting, no.

Q. Did you tell Mr. Hamilton after your conversation with Jack Rugh that you recall Jack Rugh having said he had spoken with the trustees?

A. I think I told him that at the original meeting shortly after my conversation with Mr. Rugh.

Q. That was the meeting right after you spoke with Mr. Rugh?

A. Right.

Q. You think you told Mr. Hamilton that? What exactly did you say to him?

A. I believe I said, "Jack Rugh just called me and said they talked to trustees and that we are going to fold. I want you to tell me what is going on at this point."

Q. After that meeting with Mr. Hamilton, were you subsequently asked to do anything regarding that conversation or did you have other conversations regarding the matter that Mr. Rugh had raised with you?

A. No. I am not sure of the timeframe, maybe as much as a year after my initial meeting with Mr. Hamilton regarding my call from Mr. Rugh, I was asked by Mr. Hamilton to prepare a memo outlining my discussions with Mr. Rugh and including a copy of my notes from that discussion.

Q. Why did Mr. Hamilton tell you that he needed that?

A. He just felt that the trustees were a key point and it may be helpful in our Chapter 11 lawsuit.

Q. This was in May of 1986?

A. Yes, that sounds right.

MR. COOPER: I would like you to mark as

McKain Exhibit No. 2 a document to Leigh S. Retiner, with the law firm of Dickstein, Shapiro and Morin, from Gregg McKain.

[McKain Exhibit No. 2 marked for identification.]

BY MR. COOPER:

Q. Mr. McKain, did you author this document?

A. Yes.

Q. Did anybody review this document before it was sent to Mr. Retiner?

A. Probably Mr. Hamilton. It was typed by his secretary.

Q. Do you remember Mr. Hamilton making any revisions?

A. No, he did not.

Q. Did you discuss with Mr. Hamilton or anyone else regarding what should be in your memorandum to Mr. Retiner?

A. No. He basically requested I do a memo and outlined the conversation.

Q. Did he tell you to mention the stuff about the trustees?

A. No.

Q. Do you know whether this memo was ever sent to Mr. Retiner?

A. I have no idea.

Q. Would that have been Mr. Hamilton who would send it to Mr. Retiner?

A. Or his secretary.

Q. So you prepared this memo and gave it to Mr. Hamilton?

A. Yes.

Q. Do you remember preparing the memo on May 9?

A. Within that timeframe. I am not sure of the exact date but that was the date it was typed up by the secretary.

Q. Did you actually prepare a longhand version of this or is this something you actually dictated?

A. Sometimes I will key it into the computer. My handwriting will attest to not easy translation.

Q. Do you recall if you keyed in this particular memo?

A. I think it was in longhand.

Q. That is why Mr. Hamilton's secretary had to type it?

A. Yes.

Q. Do you know where the longhand notes are?

A. No, I don't know where they would be.

Q. Do you generally throw them out?

A. When it is proofread against the draft, I discard it.

Q. Do you recall specifically discarding the draft in this instance?

A. I can't specifically recall.

Q. In May of 1986, where would any files that you had for that period reside?

A. They were collected at some point in time and I am not sure exactly when all my materials for the contract and my other logs, et cetera, were turned over to personnel.

Q. How about any personal notes you had concerning the Department of Justice or job offers that they made to you?

A. I really don't have any personal notes.

MR. COOPER: Counsel, I would request the files be searched to determine whether or not any notes exist or other drafts of the May 9, 1986 memorandum.

BY MR. COOPER:

Q. In the second paragraph of McKain Exhibit 2, it states, "As indicated on the first two lines of these notes, someone had spoken to 'trustees' regarding INSLAW's Chapter 11 status." Is that a fair characterization?

A. Yes.

Q. You didn't know who the someone was?

A. No. He just said "we" during the course of my conversation with him. He did not say I talked to trustees. He said "we" talked to trustees.

Q. Then it goes on to state "and was informed that INSLAW would not survive Chapter 11 and would enter Chapter 7 bankruptcy within 30 to 60 days." Is that your recollection as to what your notes reflected of your conversation with Mr. Rugh?

A. Yes.

Q. And the third paragraph also reflects your recollection from your notes?

A. Yes.

Q. Had you had any subsequent conversations with Mr. Hamilton or anyone else concerning the conversation that you had with Mr. Rugh?

A. No, not really.

Q. Do you recall having a conversation with Mr. Rugh on February 21, 1985 regarding the possibility of accepting a contract with the Department of Justice for PROMIS software support?

A. No.

MR. COOPER: I ask to mark as McKain Exhibit No. 3 a memorandum that was prepared by Jack Rugh.

[McKain Exhibit No. 3 marked for identification.]

[Brief recess.]

BY MR. COOPER:

Q. Mr. McKain, have you ever seen McKain Exhibit 3 before?

A. Yes.

Q. When have you seen that?

A. Mr. Hamilton showed it to me. I can't be sure of the timeframe.

Q. Was it recently, a long time ago, when did he show it to you?

A. At least a month ago, probably more than a month.

Q. Sometime after the litigation was filed?

A. Yes.

Q. Did Mr. Hamilton mention it was a document Inslaw obtained during discovery from the government in the bankruptcy litigation?

A. I am not sure of the source of the document.

Q. What did he ask you to do when he showed you the document?

A. He said, "Does this parallel what you reported?"

Q. What did you say to him?

A. I said not exactly.

Q. In which respect doesn't it parallel what you reported?

A. I don't really think after our initial filing I had any discussions with Jack Rugh regarding a small contract. I think my discussion that I recorded was the last real contact I had regarding the possibility. I never followed up from that point to he show it to you?

A. At least a month ago, probably more than a month.

Q. Sometime after the litigation was filed?

A. Yes.

Q. Did Mr. Hamilton mention it was a document Inslaw obtained during discovery from the government in the bankruptcy litigation?

A. I am not sure of the source of the document.

Q. What did he ask you to do when he showed you the document?

A. He said, "Does this parallel what you reported?"

Q. What did you say to him?

A. I said not exactly.

Q. In which respect doesn't it parallel what you reported?

A. I don't really think after our initial filing I had any discussions with Jack Rugh regarding a small contract. I think my discussion that I recorded was the last real contact I had regarding the possibility. I never followed up from that point to call him back to say yes or no, I would like to be employed.

Q. So you are saying that you never called Mr. Rugh?

A. Right.

Q. Is there something about McKain Exhibit 3--

A. I know my note on Jack Snyder is after Jack Rugh's call. This is dated February 21. I never talked to him on that day.

Q. Is your timing of the Jack Rugh calling based primarily on your Mike Snyder note?

A. No, although I know that occurred after I spoke to Jack Rugh.

Q. Because you remember that?

A. Yes.

Q. You have an independent recollection of when the Jack Rugh call occurred in terms of time?

A. I think it was sometime prior to Jack going to the Pentagon because I asked him can I get you any time and he said I will be at the Pentagon for two weeks starting Monday, so it was after we filed before that particular Monday.

Q. Referring to McKain Exhibit 3, you have mentioned the date is different. Do you recall having another conversation with Mr. Rugh about a small contract, accepting a contract for PROMIS software support?

A. Not to the degree that we discussed it on this day.

Q. But you did discuss it again with Mr. Rugh?

A. Not since this conversation. We had conversations previous to this discussion on my employment at Justice.

Q. I believe your testimony was that prior to that discussion with Mr. Rugh that you testified to, which occurred after Inslaw's bankruptcy filing, you had never discussed a small contract with the Department of Justice but that you had been discussing employment. Isn't that correct?

A. Mainly full-time employment.

Q. Had you ever discussed the possibilities of accepting a small contract with the Department of Justice in any discussion with Mr. Rugh which occurred after the discussion that you have testified to?

A. Not after.

Q. So the only time you ever discussed the possibility of a small contract with the Justice Department was in that single telephone call where your recollection is Mr. Rugh had mentioned that he had spoken with the trustees and the other matters you had spoken to?

A. We had talked although not specifically about an alternative to full-time employment in the Justice Department. I was asked many times have I filled out my 171 form.

Q. I am talking about a contract. Was the only time you talked about a contract during that one call with Mr. Rugh?

A. No. Prior to this call, he mentioned the possibility of a contract.

Q. So he had mentioned the possibility of a contract prior to that call in addition to the possibility of full-time employment?

A. Yes.

Q. Do you have any present recollection of a discussion with Mr. Rugh on the morning of February

21, 1985 regarding the matters in Mr. Rugh's memorandum?

A. No.

Q. Do you recall Mr. Rugh ever indicating to you that he had serious concerns about whether Inslaw would survive for long?

A. Not particularly, no.

Q. So you basically denied the account in Mr. Rugh's memorandum, the first paragraph?

MR. LIGHTFOOT: I object to that. It is a mischaracterization.

BY MR. COOPER:

Q. Do you know you had this discussion with Mr. Rugh on February 21, 1985?

A. Yes.

Q. You are absolutely certain of that?

A. Yes.

Q. You are certain that the call with Mr. Rugh occurred prior to that date?

A. Yes.

Q. You are certain that your call with Mr. Rugh occurred prior to February 15, 1985 which reflects

21, 1985 regarding the matters in Mr. Rugh's memorandum?

A. No.

Q. Do you recall Mr. Rugh ever indicating to you that he had serious concerns about whether Inslaw would survive for long?

A. Not particularly, no.

Q. So you basically denied the account in Mr. Rugh's memorandum, the first paragraph?

MR. LIGHTFOOT: I object to that. It is a mischaracterization.

BY MR. COOPER:

Q. Do you know you had this discussion with Mr. Rugh on February 21, 1985?

A. Yes.

Q. You are absolutely certain of that?

A. Yes.

Q. You are certain that the call with Mr. Rugh occurred prior to that date?

A. Yes.

Q. You are certain that your call with Mr. Rugh occurred prior to February 15, 1985 which reflects when you spoke with Mr. Snyder. Is that correct?

A. Yes.

Q. Do you know who Mr. Glenn Gerstel is?

A. He was a lawyer. I am not sure with what firm or what his capacity was.

Q. Did you ever speak with Mr. Gerstel regarding your telephone call with Mr. Rugh?

A. Yes.

Q. When did that occur?

A. I can't give you an exact date.

Q. Was it the day after you spoke with Mr. Rugh, a week after?

A. It was in the week following. That is about as close as I can get.

Q. Do you recall if it was before Mike Snyder called you to request a list of creditors?

A. I think it was after Mike Snyder called me.

Q. Do you recall how many days after he called you?

A. No, I can't.

Q. You just recapped to Mr. Gerstel what had happened?

A. Yes.

Q. Did Mr. Gerstel tell you that he was going to take up this matter with the United States trustees and get an answer for you?

A. No.

MR. COOPER: I would like to ask the reporter to mark this next document as McKain Exhibit 4.

[McKain Exhibit No. 4 marked for identification.]

BY MR. COOPER:

Q. Mr. McKain, would you review McKain Exhibit 4, please.

Q. Do you recognize the handwriting on McKain Exhibit 4?

A. Yes.

Q. Whose handwriting is that?

A. That is mine.

Q. Is McKain Exhibit 4 a portion of a telephone log that you prepared?

A. Yes.

Q. That refers to the year 1985 and various entries in February of 1985?

A. Yes.

Q. Mr. McKain, you earlier testified that you routinely kept a log of your contacts with persons at the Justice Department regarding the contract. Is this a portion from those telephone logs?

A. Yes.

Q. I call your attention to the entries for February 15. What does that reflect in terms at least on this log the number of calls and when you received them from Michael Snyder?

A. It reflects a call at 11:38 and 1:21.

Q. There is no reference on this log to any call from Michael Snyder regarding a list of creditors; is that correct?

A. That is correct.

Q. On February 19, there is also a call from Michael Snyder; is that correct?

A. Yes, sir.

Q. What time was that call received?

A. 12:51.

Q. In the second line -- read along with me and correct me if I say it wrong. It it says "Michael Snyder." Does that reflect he called you or that you could have called him?

A. Just that a discussion took place.

Q. How does that start out? What does tha say?

A. "Wish to have the Northern Texas collections typed today. They have seen a list of Inslaw creditors and don't think we will make it in Chapter 11. How long do we need machine -- computer --" and I made my own note we had the release of software to do, preparation for distribution.

Q. Mike told told you in that conversation they, meaning the Executive Office of U.S. Attorneys saw a list of Inslaw's creditors and don't think Inslaw will make in Chapter 11?

A. Yes.

Q. Did you mention in that call you had spoken with Jack Rugh and the trustees didn't think they would make it easier?

A. No.

Q. Did you tell Mike that you had spoken with Bill Hamilton and he assured you that Inslaw was going to make it?

A. I can't recall.

Q. But you do recall Mike having said after reviewing the list of Inslaw creditors that the Executive Office did not think Inslaw would make it in Chapter 11?

A. Yes.

Q. Had Mike expressed that view to you at any time prior to February 19?

A. No.

Q. Had anyone else from the Executive Office expressed that view before February 19?

A. Only Jack Rugh's call.

Q. Did Jack Rugh say he didn't think Inslaw would make it in a Chapter 11 either?

A. I am fairly certain he did not mention it other than the first statement of his phone call.

Q. Did you ever call Jack Rugh after that first call to discuss the trustees?

A. Not that I can recollect.

Q. You never followed up on that and asked Jack for further information about the trustees; is that correct?

A. I may have called at Mr. Hamilton's prompting, but I don't think I ever had a discussion regarding it.

Q. What was the connection with Mr. Hamilton prompting? Did he ask you to call Jack?

A. I think at a later date, he came to me and said, "What is this trustee. You should call Jack Rugh and try to get more information from him."

Q. When did that occur? You said you had the call from Jack Rugh, you confronted Mr. Hamilton, he assured you. When in connection with that discussion did Mr. Hamilton then prompt you to call Jack Rugh back?

A. I can't give a specific date.

Q. Days later, a week later, the same day?

A. Not the same day. It seems to me it was like a week or so later.

Q. What was the purpose of calling Mr. Rugh?

A. To obtain more information about trustees which I knew very little about at that time.

Q. Did Mr. Hamilton tell you it would help him in the litigation against the department?

A. Not really. He said, "I would like you to call Jack and see what he meant by these trustees."

Q. Did you ask Mr. Hamilton why?

A. Not particularly.

Q. Were you a little reluctant to call Jack back on that matter?

A. No.

Q. I call your attention to the second page of McKain Exhibit 4 to the reference to 2:22. You have "MS - " What does that say?

A. MS is for Mike Snyder. I returned his call and left a message.

Q. Left message, meaning you called him and left a message?

A. Yes.

Q. Next?

A. Jack Rugh, I left a message for him regarding trustees.

Q. Do you have a present recollection of leaving a message for Mr. Rugh regarding trustees?

A. Yes.

Q. Was this the call that you made at Mr. Hamilton's urging?

A. Yes.

Q. Do you have a present recollection of that?

A. Of the call?

Q. Of having made that call at Mr. Hamilton's urging?

A. Yes.

Q. Did you?

A. Yes.

Q. Did Mr. Rugh ever call you back regarding the trustees?

A. I believe not because I never really ever discussed it any further.

Q. Did you try to call him again?

A. No.

Q. Hadn't Mr. Hamilton told you it was important to call Mr. Rugh?

A. He didn't stress importance but that I call him.

Q. You had not spoken to Mr. Rugh to get that information?

A. No.

Q. You made just the one call and never followed it up again?

A. Right.

Q. Go back to the prior page. You left that message for Mr. Rugh regarding the trustees at 10:41 a.m. on February 22; is that correct?

A. Yes.

Q. Your notes reflect at 12:15 on February 22, you spoke with Mr. Rugh?

A. Yes.

Q. Do you recall during that discussion? Do you recall whether Mr. Rugh was returning your call when you spoke to him at 12:15?

A. He was returning my call.

Q. Did you ask him about the trustees?

A. No.

Q. Why not?

A. At that point, I started to feel it was a fairly tender issue and I did not press it with him.

Q. What happened between the time you left the message at 10:41 and 12:15 that led you to believe that it was a tender issue?

A. The fact that I was requested to call him back in the first place kind of tipped me off that this could be beyond some general information that I should have found out about.

Q. But you did call him and leave a message?

A. When Mr. Hamilton, my boss, said call Jack Rugh, I called him.

Q. You were not bothered about that?

A. No.

Q. In between 10:41 on February 22 and 12:15 on February 22, you became sufficiently bothered about it that you did not discuss the matter with Mr. Rugh?

A. I don't think I have been particularly bothered about it. It is just a descriptive phrase of what I thought about the matter.

Q. But you did not discuss the trustee matter?

A. No.

Q. What did you discuss with Mr. Rugh?

A. That the prime computer would probably be removed next week from the computer center.

Q. Do you recall Mr. Rugh during this period of time being concerned about removing the government's prime computer from the Atlanta facility?

A. He had made calls requesting what would be necessary preparation for removing it. The contract was coming to an end so I was assuming at that point the machine went with it.

Q. Had that been a concern that he had expressed after Inslaw's bankruptcy filing?

A. Not that I am aware of.

Q. Did Mr. Rugh express any concern to you as a result of Inslaw's bankruptcy filing that Inslaw might not be able to perform its remaining deliverables under the contract?

A. No, we were basically completed at that point.

Q. The contract did not expire until March 15?

A. The deliverables were probably 80 percent ready for what we had to hand over to Mike Snyder.

Q. Was it ever your impression that the Executive Office of U.S. Attorneys wanted to see Inslaw liquidated?

A. I have no reason to believe that.

MR. COOPER: I have no further questions.

MR. LIGHTFOOT: I have no questions, and we don't waive signature.

[The deposition was concluded at 12:55 p.m.]

I have read the foregoing pages 3 - 59 of my deposition and find the transcription to be accurate except for any corrections noted.

____

GREGORY A. McKAIN

Date ____________________

Sworn and subscribed to before me

this ______ day of ____________,

19_____.

____

Notary Public in and for

____

My Commission expires:

____

CERTIFICATE OF NOTARY PUBLIC/COURT REPORTER

I, Albert J. Gasdor, the officer before whom the foregoing deposition was taken, do hereby certify that the deponent was duly sworn by me; that the testimony was stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the testimony given.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this proceeding, nor financially or otherwise interested in the outcome of this litigation.

Albert J. Gasdor

ALBERT J. GASDOR
Notary Public in and for
the State of Maryland

My Commission expires:

June 31, 1986

[illegible] = [illegible] closet to [illegible] [illegible]

chap 11 [illegible] chap 7 [illegible]

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Timing of [illegible]

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McKAIN Ex #1
3-27-87

1

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chap. 11 now [illegible] — prior chap. 7 [illegible]

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Timing of EO [illegible]

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as long as cluster exists They can't be solve same

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list price is hourly

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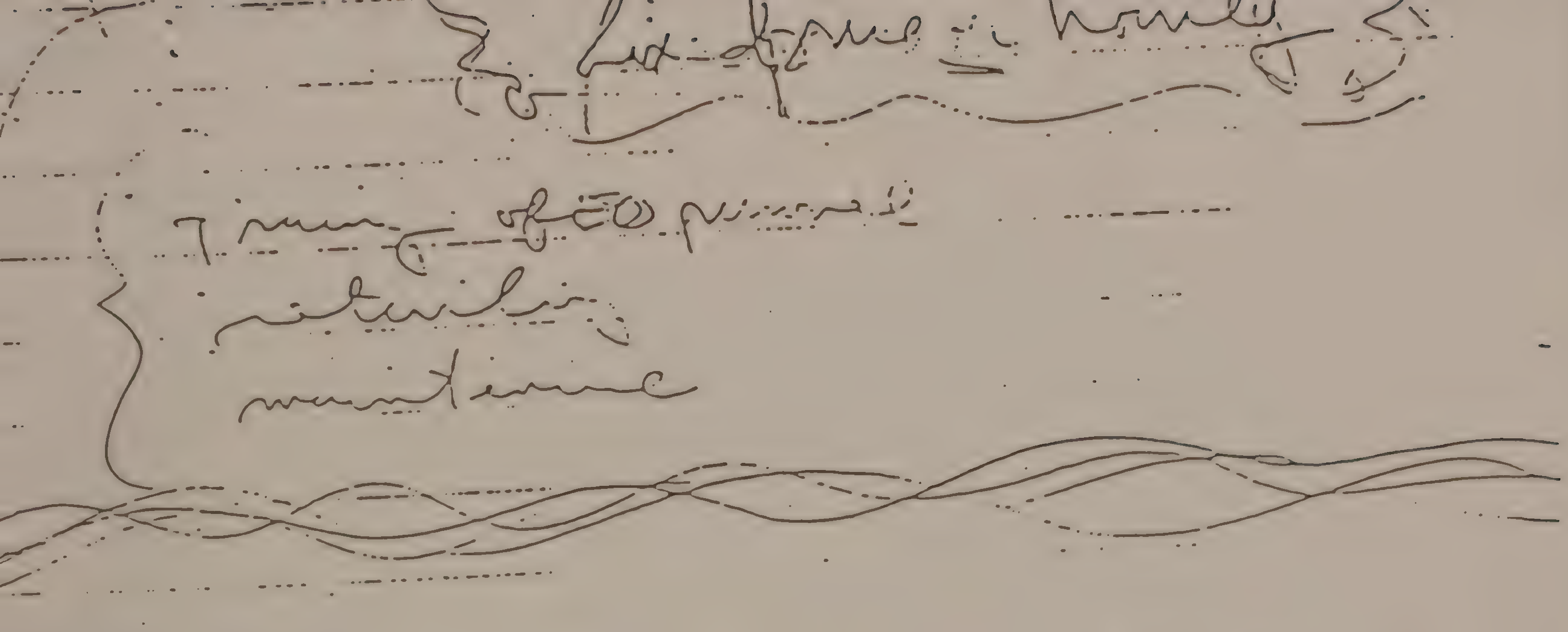
interval

maintenance



McKAIN Ex. #1
3-27-87

①

.25 15th St., N W Suite 600 Washington, D C 2 5
(202) 828-8600 TWX 710-822-0146 Cable INSLAW

William A. Hamilton, President

May 9, 1986

MEMORANDUM TO: Leigh S. Ratiner, Esq.
Dickstein, Shapiro & Morin

FROM: Greg McKain

SUBJECT: Conversation with Jack Rugh

Please find attached a photocopy of my notes taken during a telephone conversation with Jack Rugh shortly after INSLAW filed for Chapter 11 protection from bankruptcy in February 1985.

As indicated on the first two lines of these notes, someone had spoken to "trustees" regarding INSLAW's Chapter 11 status and was informed that INSLAW would not survive Chapter 11 and would enter Chapter 7 of bankruptcy within 30 to 60 days.

The remainder of the conversation dealt with possible employment for myself if, in fact, INSLAW no longer continued to do business.

I immediately confronted Bill Hamilton regarding INSLAW's Chapter 11 status due to my great concern for continuing employment.

Attachment

GM:tbr

Memorandum from Greg McKain to Leigh S. Ratiner
(Exhibit C)

McKain Ex. #2
3-27-87

February 21, 1985

Conversations with Greg McKain
and Glenn Gerstell

FILE

Jack S. Rugh
Assistant Director
OMISS/EOUSA

This morning I spoke to Greg McKain about the possibility of accepting a small contract with us for PROMIS software support following termination of INSLAW's contract. I indicated to Greg that, although we had considered such an option earlier, we had rejected it. I told him we felt that as long as INSLAW existed there was no good basis for offering him a contract. I also told Greg that, because INSLAW had not responded to Pete Videnieks' request for a proposal for a maintenance extension, we felt they were not interested in such an extention. I indicated that I personally had serious concerns about whether INSLAW would survive for long. Greg indicated that he was interested in pursuing a contractual relationship, and I told him that we would discuss the matter with Pete Videnieks.

This afternoon I received a phone call from Glenn Gerstell of Milbank, Tweed. Mr. Gerstell ~~related~~ told me that he had talked with Bill Hamilton regarding a conversation between Greg and Bill. Greg had apparently told Bill that we had offered him a job, and indicated that INSLAW would not survive. Mr. Gerstell said that he wanted to assure me that INSLAW's prospects for survival were good, and to offer any assistance that we may need. He also wanted to know our official opinion on INSLAW's situation. I told him that I had seen to bankruptcy papers, but that he would have to talk to Pete Videnieks or Janice Sposato for any official information. I did tell Mr. Gerstell that we planned to remove our computer from INSLAW's data center prior to the termination of our contract, and that I was concerned about how to accomplish that action.

McKAIN Ex. #3
3-27-87

CH 5

3)

E-R-R-A-T-A S-H-E-E-T

To the deposition of GREGORY A. McKAIN.

The deponent having a right to make any changes deemed necessary hereby makes the following changes into the deposition and states the reasons for each change accordingly.

PAGE NO.	LINE NO.	CHANGE (State Reason for change after each)
4	15	"those duties" should be "project manager duties" (clarification)
12	16	"after the bankruptcy was filed" should be "late in the contract" (correction)
13	17	"We have" should be "We don't have" (incomplete recording)
18	17	"if we are" should be "if I was" (correction)
19	18	"11" should be "7" (incomplete recording)
19	19	"11" should be "7" (incomplete recording)
24	5	"some maintenance" should be "some training" (incomplete recording)

DEPONENT'S SIGNATURE

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31	20	"survive" should be "surviving" (correction)
32	8	"were some goings-on" should be "there were some prepositions" (inaccurate recording)
32	18	"responds" should be "respond" (correction)
33	2	"He did" should be "He said that" "work that would" should be "work would" (correction)

DEPONENTS' SIGNATURE

ERRATA SHEET

To the deposition of GREGORY A. McKAIN.

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45	7	"Jack Snyder" should be "Mike Snyder" (correction)
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52	7	"typed" should be "tapes" (correction)
58	15	"It is just a" should be "I think Kothered is a Kad" (incomplete recording)

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McCain Ex = 4
3-27-87

2/14
8:45 Mike ~~[illegible]~~ Singles = [illegible] [illegible]
[illegible] today - plan [illegible] [illegible]
100 per day

5:57 Mike Singles - no NT [illegible] - [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] - [illegible] [illegible]
+ pick up [illegible]

10:42 Mike Singles - [illegible] [illegible] no [illegible] - [illegible]
+ [illegible] [illegible] [illegible]

12:03 M.S. - ① [illegible] [illegible] [illegible] [illegible]
- [illegible] ② Johnny - [illegible]

2/15
11:?? [illegible] - [illegible] 136 [illegible]
[illegible] [illegible] [illegible]

11:20 Mike Singles - [illegible] [illegible] [illegible]
[illegible] AC [illegible] for [illegible]

1:21 Mike Singles - [illegible] A request for
[illegible] [illegible] [illegible] - [illegible] [illegible]
[illegible] - [illegible] 10 [illegible] [illegible]
to [illegible] this

④

2/19
[illegible] - [illegible] [illegible] [illegible] NT [illegible]

McKAIN Ex. #4
3-27-87
G

2/14
8:45 Mike ~~[illegible]~~ Snyder ≡ manuals scheduled to be
ready today - plan to ship out
1:00 pm today

✓ 5:57 Mike Snyder - no NT D42 - he thought
would have them by now - I may have
to pick up this pm

10:42 Mike Snyder - left msg w/ John re: clarifying info
& sending contents repaginating

8:45 Michael ~~[illegible]~~ = [illegible] [illegible] ready today - plan to [illegible] 1:00 pm today

5:57 Mike Supplee - re: NT Pkg. - he [illegible] [illegible] have them [illegible] - I [illegible] [illegible] to pick up this pm

10:42 Mike Supplee - left msg re: Johnny - [illegible] & reading contents [illegible]

12:03 M.S. - ① [illegible] [illegible] [illegible] [illegible] at [illegible]
- NC ② Johnny - [illegible]

2/15

11:28 Shawn [illegible] - re: [illegible] 136 [illegible] [illegible] OK - [illegible] [illegible] [illegible]

11:25 Mike Supplee - OAN, VATE [illegible] to new AC [illegible] for [illegible]

10:42 Mike Singalin - but my no. going - deciding info
+ reading contents responsibility

12:03 M.S. - ① can manually be done at NFA
- NO ② going - any delay

2/15

11:28 Shaw Hagan - no circle 136 CO must c
OK. other method ok

11:25 Mike Singalin - OAN, VAE delayed due to
new AC code for DIR

1:21 Mike Singalin - no MA request for
added req. change - not tied except
month - no. 10 contract claim
to help in this

④

I14768

2/19

[illegible] c 0.. - ①.. showed how NTX [illegible]

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

- - - - - - - - - - - - - - - - - x
In Re: :
INSLAW, INC., : Case No.
Debtor, : 85-00070
------------------------------------ :
INSLAW, INC., :
Plaintiff, :
vs. : Case No.
THE UNITED STATES OF AMERICA and : 86-0069
THE UNITED STATES DEPARTMENT :
OF JUSTICE, :
Defendants. :
- - - - - - - - - - - - - - - - - x

Washington, D.C.
Wednesday, June 17, 1987

Deposition of PETER VIDENIEKS, a witness herein, called for examination by counsel for the Plaintiff in the above-entitled action, pursuant to notice, the witness being duly sworn by SUSAN A. HARRIS, a Notary Public in and for the District of Columbia, at the offices of McDermott, Will & Emery, Suite 500, 1850 K Street, N.W., Washington, D.C., at 11:12 a.m., and the proceedings being taken down by Stenomask by SUSAN A. HARRIS and transcribed under her direction.

APPEARANCES:

On behalf of the Plaintiff:

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Washington, D. C. 20044
(202) 724-8418

Also present:

WILLIAM HAMILTON
Inslaw, Inc.

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P R O C E E D I N G S

(Witness sworn.)

Whereupon,

PETER VIDENIEKS,

business address at U.S. Department of Justice, P.O. Box 875 Ben Franklin Station, Washington, D.C. 20044, (202) 724-8418, was called as a witness anc, after having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL

FOR PLAINTIFF

BY MR. KELLOGG:

Q Would you give us your name, sir?

A Peter Videnieks.

Q Would you spell that for the reporter?

A V-i-d-e-n-i-e-k-s.

Q Mr. Vicenieks, where do you live?

A 903 East Capitol Street, Southeast, Washington.

Q Nice neighborhood. I used to live in the 100 block of Kentucky Avenue.

A Oh, yes.

Q Not too far from there.

Can you give us, Mr. Videnieks, a kind of thumbnail sketch of your educational background and your employment history up to the point where you came to work for the Department of Justice?

A Sure. Which do you want first?

Q Your education first.

A Okay. High school, general degree, economics in college and a master's degree in procurement from GW.

Q What dates are we talking about?

A I think it was '54 college and '72 or '73 from GW, the master's.

Q What was your first fulltime job after you go through college?

A Internal Revenue Service, revenue officer.

Q What sort of work did you do as a revenue officer?

A Collect taxes.

Q Did you work in the collection branch?

A Right.

Q Around here locally?

A New Jersey and locally. Also went to law school for one semester, but that never materialized.

Q Where did you go to law school?

A I can't remember.

Q Sometime after '63, '64?

A Yes. Probably '56, GW, but then again --

Q You just went for a semester?

A Yes. It was at nights, and I couldn't handle it.

Q Did there come a point where you terminated your employment with the Internal Revenue Service?

A I went to work for NASA, Goddard Space Flight Center, as in the field of procurement.

Q When was that, sir?

A '67.

Q How long did you work at NASA?

A I was there twice, approximately to '72. Then I went to U.S. Customs Service till about '74, then back to NASA '75, then back to Customs around '75-'76, and then '80-'81 I came to Justice.

Q All right. Now, at what point in your career in government procurement work did you first serve as a contract officer on any particular government contract?

A '68.

Q This would have been while you were at NASA?

A Right.

Q Now, before you did that, before you had that first experience as a contract officer --

A It could have been '69.

Q Whatever date it was, before you did the first ones, either in your academic work at GW or otherwise on the job, did you receive any formal training as to what the functions of a contracting officer were in respect of a government contract?

A Yes. NASA had an excellent structured formal training process. One was considered more or less a trainee up through -- I'm a grade 14 now -- through a grade 11, and there were formal courses and also official trainers assigned were senior people who would rate you and make decisions as to whether you can be promoted or not to the next level.

Q They would give you guidance generally on how to?

A Sure, guidance and, well, in the formal part of the training there were tests, examinations.

Q All right, and I take it your academic work at

GW in procurement, did that focus on government procurement practices?

A Government procurement.

Q You have had some training in that as well about the functions of a contracting officer?

A Sure.

Q Well, I guess I should preface this question by saying, which is probably obvious to you already, I don't know anything about government contracts and all of the intricacies that innere in them except that I know there are a lot of intricacies.

Again, give me kind of a thumbnail sketch of what is the function of a contracting officer in a government contract as you understand it.

A Can you be more specific, please? Do you mean the pre-award stage, the post-award stage?

Q Well, I take it --

A Contract administration?

Q I guess I am focusing primarily on the period of time during which the contract is in effect, so it would not be the negotiations but from the time the contract is actually executed until during its performance, during that stage is what I'm focusing on in terms of my question.

A That stage is referred to as being the contract administration stage, and typically the procurement person would function as a contract administrator.

Q What are the duties of the contracting officer in acting as the contract administrator during that contract administration phase?

A Again, I wish you'd be more specific. It's a very general question.

The procurement regulations are a two volume looseleaf document.

Q I'm just giving you to give me an overview. I'm not asking you to repeat, obviously, every line of two feet of documents

A To monitor fron a procurement sense the performance of the contract, to see that the effort procured is performed in accordance with the contract; that the government's interests are protected; that the contractor's interests are protected; to issue any necessary contract modifications, negotiate them; again, to see that during the life of the contract the contract reflects changing additions, if there are any.

Q Now, you mentioned that among your duties were to both see that the interests of the government were protected in connection with the contract and also to see that the interests of the contractor were protected.

Do I take it from that that as a part of your role that the concept of the contracting officer is that you are to be something of an independent person, or are you there simply to protect their best interests in the particular contract?

A Would you at least clarify the word "independent"? Obviously, I work for the government.

Q I understand.

A I'm not a judge.

Q I'm just following up. You indicated that part of your duties, a part of a contract administrator's duties would be to see that the government's interests were protected and, as well, to see that the contractor's interests were protected.

A Right, and maybe I understand. You asked me about the contractor's interests now?

Q Yes. Implicit in that, it seems to me, at least I took it implicit in that, is the notion that your function was not limited indeed to merely protecting the government's interests. Is that a fair statement?

A Well, true in the sense this being one example. I advise the technical officers -- I mean the contracting office's technical representative, the COTR, as to what his limitations are. That serves to protect both parties, both the contractor and the government.

In other words, it defines the COTR's scope of authority, and based upon this he does not go and direct the contractor to perform acts outside the scope of the contract.

Q Let me ask this. Would it be a part of the contract officer's role or duty that if in a given situation the COTR was requesting that the contractor do things that went beyond the scope of the contract, it would be the contract officer's duty to, in effect, sit as a judge on that dispute and decide yeah or nay? Would that be accurate?

A It's not accurate because the word "dispute" is not accurate. If there's a difference of opinion as to whether something is within, let's say, a technical direction of the issue, both the contractor and the COTR are advised, have been advised in this case, what they should do if they feel something is outside the scope of the contract.

The contractor is advised to contact the contracting officer and advise him that the COTR has requested outside the scope of the contract. Similarly, the COTR is advised not to make requests which are outside the scope of the contract. So the mechanism is there.

Q Yes, and the function of the contracting officer within that mechanism is to act, if you will, as an informal arbiter.

If the contracting officer feels that the technical direction, for example, is indeed a technical direction, he will issue an administrative order basically ratifying that technical direction. If the contracting officer feels indeed that it was a change order, he would issue a contract modification pursuant to the changes clause.

Q So in that sense you do act, the contracting officer would act, you may not want to call it a judge but as an arbiter of any possible disputes on those types of questions between the COTR on the one hand and the contractor on the other. Isn't that right?

A Similarly, to the case I just described, the situation I just described, that would be the case.

Q In ruling on questions of that sort like you described there, it would be the contract officer's function to perform that duty in an independent way.

Now, when I say "independent" in that context, I mean with an independent view of what are the requirements of the contract and not merely from the perspective that you are there trying to protect the interests of the government solely.

Is that fair to say?

MR. COOPER: Objection to the form of the question.

BY MR. KELLOGG: (Resuming)

Q You can answer.

A I don't like the word "ruling". It implies that a formal ruling as if a judge would make a ruling.

Q I mean informal ruling.

A As to make my decision as to whether something is a change order or technical direction, subject to administrative approvals, if they apply, I am the authority in that decision. I would sign the document.

Q I understand that, and all I'm saying is that just so I understand the concept correctly, the contracting officer's duty in resolving these informal issues of the type that we're talking about here, the contracting officer's duty would be to resolve those issues independently, guided by the contract and the applicable regulations and not guided merely by the parties in interest of a person who is there to do nothing but represent the interests of the government.

A Is this a question?

MR. COOPER: Object to the form of the question.

BY MR. KELLOGG: (Resuming)

Q Yes, it's a question. Is that accurate?

A It seemed like -- would you please restate it?

Q I'm not trying to be tricky here. I'm just trying to make sure I understand.

You've testified that in the course of the contract officer's function that if there arise issues about whether something that the COTR wants the contractor to do, whether that is within the contract or not; that is, whether it should be done by the contractor within the contract or, if it is to be done, whether it would have to be the subject of a modification.

You have indicated that to decide that type of a question would normally be a part of the contracting officer's function; isn't that right?

A Yes.

Q All right. Now, my question simply is in performing that function in that setting, isn't it accurate that the contracting officer's duty is to perform that function not guided solely by the partisan interest of the government but rather to be guided independently by the contract and by the applicable regulations?

A To be guided by the contracts, the contracting officer, the administrating contracting officer administrates the contract in accordance with the contract provisions.

Q All right, and that if anybody is, in effect, going to be there in connection with the contract, the government contract, to represent the interest of the government alone, that's the COTR and the program manager and so on; isn't that right, not the contract officer?

A All government officials involved with the administration of a contract are required to adhere to the provisions of the contract.

Q I want to turn to your role in the Justice Department and particularly your goal in connection with this INSLAW contract that is the subject of this litigation.

I take it, you say, you went to work at Justice in 1980 or 1981; is that right?

A Right.

Q What part of the Justice Department did you go to work for?

A Justice Management Division.

Q All right. Now, I take it there came a time after you went to work at the Justice Management

Division that you were assigned to, I believe the phrase is to conduct a competitive procurement in respect of what became this INSLAW contract. Isn't that right?

A Right.

Q About what time, to your recollection, was the first time you ever heard of this proposed contract?

Let me take that back. I don't mean proposed contract. I mean when did you first hear that you would be or you might be assigned to this project, this competitive procurement?

A Probably a week or so before I reported for work at the Justice Department. My future supervisor even gave me a copy of the draft work statement which was to be used in the competitive request for proposals.

Q Who was your then proposed supervisor?

A Patricia Rudd.

Q Patricia Rudd?

A Yes, R-u-d-d.

Q May I infer from that that you were brought over there or that you went over there with the specific view to undertake in this particular project, or was that just a happenstance?

A I even learned during the interview process or somewhere along the line that that would be one of my assignments.

Q Well, let's put it this way. When you were interviewed, in the course of going to JMD did they indicate that this was the reason that they were looking for another person to act as a contract officer, because they had this particular project and someone needed to work on it?

A I don't recall. I was hired. The job was advertised as, I believe, supervisory contract administrator. Upon being hired by Justice Department, I was assigned this task, basically to see the PROMIS procurement through.

Q At the time that you were sent a draft of the work statement by Patricia Rudd, had you already been hired but the paperwork was just not completed?

A I think so. I think that was the case.

Q When was this, roughly?

A It would have been a week or so before I reported to work, 1980 or '81, the fall.

Q All right, fall of '80 or '81. All right.

Now, when you get to work, how long after you get to work do you ever come into contact with this proposed project again?

A I imagine pretty quickly.

Q Within a few days?

A I would say so, yes.

Q Now, before you went to JMD, in the course of your other work at NASA and Customs and so on, had you had occasion to act as a contract officer in connection with computer software contracts?

A Yes.

Q About how many?

A I cannot estimate.

Q Less than 100?

A Less than 100.

Q Less than 50?

A Less than 50.

Q Less than 25?

A I would have to guess at that point.

Q Now, apart from that experience, did you have any training or particular specialized knowledge in computer software?

A From a technical aspect?

Q Yes.

A The answer is yes but not much.

Q So in the course of your work, previous work administering these contracts, would you pretty much rely on some other technical person for technical advice?

A Throughout my career, true.

Q Now you get over there to JMD, and Patricia Rudd has already given you a copy of this draft work statement.

What is the next thing that happens in terms of your involvement with this executive office of U.S. Attorney's project?

A I prepare a solicitation document.

Q Now, when you say a solicitation document, is this, you know, again my knowledge is so sketchy, is this what they customarily refer to as a RFP, request for proposaal?

A In this case, no. In this case, it was a request for industry comment.

Q Tell me what's the difference?

A It's a preliminary document. It's basically asking industry to comment on the government's requirement as to whether it's current, and maybe whether it's restrictive or not; that kind of thing.

Q When you say comment, I take it that what you are looking for is comment from people or entities that might be interested in being bidders, asking whether or not they could or would be willing to bid on a solicitation of this sort, if it were framed in this way?

A Partly. Also, for their suggestions, how the requirement could be better met.

Q Now, before you did that, either before or after you went to work there, did you go and talk with anybody in the executive office of the U.S. Attorney's regarding what their needs were and get any input from them?

A Before I came to work for the Justice Department?

Q Either before you came to work, or in any event, before you prepared this soliictation document.

A Well, the heart of the solicitation document is a statement of work or specifications, which typically is originated by the program or technical office.

Q And in this case it was originated by the people in the executive office of the U.S. Attorneys?

A That's right.

Q But my question is, in connection with your review of that, and taking that and preparing the solicitation document, did you have any occasion to have any discussions with anybody in the executive office of U.S. Attorneys?

A There were -- the executive office of U.S. Attorneys at that time was located, the program office, Patricia Goodrich was the program manager. She was located I believe on the first floor of the same building I was in during this process, the preawarc procurement process.

There was continuous interface between the program office and the procurement office.

Q Okay, soyou met with Patricia Goodrich during this period of time frequently?

A Right.

Q And discussed the statement of work?

A Sure.

Q And all of the aspects that went into your preparation of the solicitation document?

A Yes.

Q And roughly how long after you went to work did you issue the solicitation document?

A The request for industry comment, I believe, were issued -- I am guessing -- about two months after I reported for work at the Justice Department.

Q Now, you indicated that your recollection is that -- strike that.

Let's go off the record.

(Discussion off the record.)

BY MR. KELLOGG: (Resuming)

Q All right, off the record, we had a brief discussion trying to pinpoint whetherh or not you went to work in the fall of '80 or the fall of '81, and I guess everyone's best recollection is, in light of other events, it probably was the fall of '81, correct?

A Correct.

Q So that assuming that to be correct, would it be somewhere say in the neighborhood of October, November of '81, that you would have issued the request for industry comment?

A Correct.

Q And how long after that did you get comments back from industry?

A I don't recall how much time we gave for comments. It could have been 30 days. It could have been as short a fuse as 15 days.

Q All right. And I take it that you got industry comment back, included in that you got some kind of response from Inslaw, didn't you ?

A I can't specifically recall, but I'm pretty sure I did.

Q All right, now, when you got that, those comments back, whenever you got them and from whomever you got them, were you involved in evaluating those comments?

A The comments were, if I remember correctly, primarily technical in nature. I don't have the technical expertise, so I did not evaluate them from a technical viewpoint.

I was involved in incorporating the comments in the eventual RFP.

Q Once you get the responses to your request for industry comment, do you have any occasion to discuss them with the people in the executive office of U.S. Attorneys?

A Yes, I do.

Q And here, again, are you still talking to Patricia Goodrich?

A I think so. Patricia Goodrich, Carol Sloan.

Q Who else?

A Jack Rugh I believe was on board at the time.

Q Anybody else?

A I don't -- I don't think so, that I recall.

Q Was Mr. Brewer on board at that particular time?

A No.

Q Now you get the comments. They are reviewed primarily by the technical people at the executive office.

A Also, some comments may have been of the nature that the procurement is restricted and slanted towards, at that time, the incumbent on the pilot project.

Q Which was Inslaw?

A Right, those comments were resolved.

Q What do you mean by that, resolved?

A In other words, they were reviewed by the program office, and procurement office, and considered the RFP was released.

There were some changes made to the RFP. It was released.

Q All right, so ultimately, the RFP that went out, you were satisfied, and the people in the executive office were satisfied, that as the RFP was released in that form, it was not unfairly slanted.

A Restricted; restricted competition. The concern in these situations is restricted competition.

Q And you were satisfied that it wasn't restrictive in the form it was released?

A Yes.

Q About when was it that the RFP was released?

A December of '81.

Q All right, December of '81.

Now, at that point, had Mr. Brewer come on board yet?

A I don't think so.

Q How long after that did you get responses fro the RFP?

A I can't recall whether the time for responses was 30 days or 45 days.

Q All right, but it was one of the two?

A Yes, to the best of my knowledge.

Q And either 30 days, 45 days, somewhere in the there, starting with the release of the RFP in December, you get the bids, in effect, don't you?

Strike that, maybe it's not bids, but responses?

A We call them proposals.

Q Proposals in response to the RFP?

A Right.

Q And Inslaw submitted one of those proposals, didn't it?

A Right.

Q Now, were you involved in evaluating those proposals?

A Yes.

Q And did you have discussions with people in the executive office regarding that evaluation?

A Yes.

Q Now, at this point, again, I take it you are still talking to Patricia Goodrich, Carol Sloan?

A Yes.

Q And Jack Rugh?

A Yes.

Q Anyone else during that period of time, the evaluation of the RFP responses?

A There was an individual assigned to participate from another organization on the evaluation panel. I can't recall his name.

Q But he did not work in the executive office of U.S. Attorneys?

A He may have, he may have worked in another part of the executive office, or even outside the executive office.

I remember, I think it was an older individual who shortly thereafter retired, but I don't recall his name.

Q All right. Here again, was Mr. Brewer involved at all at this point regarding the evaluation of the responses to the RFP?

A To the best of my knowledge, no. I can guess at which point Brewer --

Q Why don't you tell me now, to your recollection at which point did he become involved?

A During the negotiations with Inslaw.

Q All right. After you get the comments --

strike that -- not the comments, but the responses to the RFP, within what timeframe is a decision made to select a particular contractor, and then begin the process of trying to negotiate a contract?

A It varies with the number of proposals received.

Q In this case?

A Well, your question wasn't phrased that way.

MR. COOPER: I object. Do you want to frame your question in connection with this case.

MR. KELLOGG: I thought I said this case. If I didn't, I intended to.

BY MR. KELLOGG: (Resuming)

Q In this case, how long after you got the respnses to the RFP was there a decision made to select a particular proposal and then start to negotiate a contract?

A I don't recall. Typically what the contracting officer does is to separate, take a look at the proposals from cost proposals, and then submit by memorandum the technical proposals through the technica evaluation panel.

Then he gives them a time for a response. That time could vary from two weeks to six weeks or more. I think in this case, we may have given them two weeks.

And subsequent to that, the contracting officer determines a competitive range as to who is in the zone of consideration, and then the next step is negotiations.

Q All right, I take it then that at some point you determined that Inslaw was within the competitive zone?

A Right.

Q And was there anybody else in the competitive zone?

A I don't think so. I think there were two or three people who submitted proposals.

Q A total of two or three submitted responses to the RFP?

A Correct.

Q And of those, your recollection is that Inslaw was the only one you determined to be in the competitive zone?

A I think correct. To the best of my recollection.

Q So you got Inslaw, the only one you can remember in the competitive zone. And what happens after that?

A We negotiated with Inslaw.

Q Who participates in the negotiation process on the side of the government?

MR. COOPER: In this case, counsel?

MR. KELLOGG: Yes, in this case.

THE WITNESS: The contracting officer and personnel from the program office, and personnel from the audit staff.

BY MR. KELLOGG: (Resuming)

Q Well, to your best recollection, who were those people in this case? Obviously yourself, but who in addition?

A An interim step, which was left out, is a second set of technical evaluations, basically to concentrate on the contract, or cost proposal, the reasonableness of the loading, and so forth.

Then after that is done, negotiations take place, and a negotiation team was composed of me, Pat Goodrich, there was a project director, Jack Rugh, Bob Whiteley.

Q And I take it Mr. Whiteley was the person from audit?

A Correct.

Q He worked in the Justice management division audit section at the department, or whatever it's called?

A Right.

Q And roughly what period of time did these negotiations cover?

A I think they may have covered -- the contract was signed on March 16 of '82. I think negotiations may have covered, including time for submittal of best and final offers and clarifications, a couple of months.

Q All right. So that --

A So two or three months, because the initial proposal, as submitted by the contractor, offer at that time needed to be significantly revised to enable meaningful negotiations.

It was above the budgetary means of the government.

Q And what was the original proposal in dollar terms?

A If I remember correctly, it must have been $18 million.

Q And the budget framework was what?

A If I have to guess, it must have been $6- to $8 million; maybe less than that, maybe $5 million less; a significant difference.

Q In any event, somewhere by the 15th, 16th of March, the negotiations are concluded, and you get an executed contract with Inslaw; isn't that right?

A Right.

Q Now, you had indicated earlier in your testimony that your best recollection was that Brewer came on board, Mr. Brewer came on board sometime during the conduct of these negotiations, before the contract was actually signed; that's correct?

A That's correct.

Q Did he participate, to your recollection, in any of the negotiations that led up to the execution of the contract, March 16, '82?

A Yes.

Q For what period before the execution of the contract did he participate?

A I can't recall.

Q Well, would it have been as long as two weeks?

A Longer, I feel, but I can't guessed. I think Brewer stepped in at the midpoint of the process.

Q So something in the range maybe of a month before the execution of the contract?

A I don't want to guess; I really can't remember.

Q Whatever the date was that he came in, did he play an active role in the negotiations from the time he got involved?

A Yes.

Q Would you say that on the side of the program people that he played the dominant role?

A No.

Q Who did?

A I felt I was fairly dominant.

Q That wasn't my question. I didn't mean dominant, embracing everyone in the department who was involved, but simply from the program office, that is, the executive office people who were involved in the negotiations.

Would it be fair to say that he played a dominant role once he became involved, Mr. Brewer?

MR. COOPER: Objection to your question. You haven't laid a foundation that Mr. Videnieks was present at all negotiation sessions which were attened by the executive office of the United States Attorneys.

MR. KELLOGG: Well, I'm limiting the question to those that he knows about.

THE WITNESS: I think Brewer played a dominant role among the EOUSA personnel. However, not -- he played a dominant -- he was an active participant, because he was brand new, newly on board. And he was an active participant.

BY MR. KELLOGG: (Resuming)

Q Now, after he came on board, did you and he ever have what I would call an initial meeting, kind of a get acquainted session in which he sat down with you and described generally how he wanted to proceed and wanted to solicit your views?

I'm making this up, but I'm asking, was there an initial meeting at any point after Brewer came on board, between yourself and Mr. Brewer about the whole issues, the whole contract?

A We met, during the course of our duties, to the best of my recollection. There was no specific meeting to be meant as an introductory meeting. There was no such meeting.

Q Well, did you have a meeting with Mr. Brewer alone early on once he became involved?

A I don't recall any such meeting. There may have been a meeting where he met -- if I remember correctly, he didn't even have an office at the main Justice building for some time, and then he shared an office or had a temporary office there for some time.

And he had other duties in his prior occupation, so he was not readily available.

And I don't recall ever having a meeting with him, other than as events dictated.

Q In the course of whatever meetings that you did have, that he attended and you attended in this early period, and I'm talking now before the contract was actually executed, did Mr. Brewer ever indicate to you that he had been employed previously at Inslaw?

A I can't recall how I came to learn and when Mr. Brewer had ever been employed at Inslaw.

Q So my question is, did Brewer ever tell you that. Is your answer that you don't recall him telling you that?

A That's my answer.

Q But he may have?

A He may have, yes.

Q Because at some point you did learn that --

A Whether it was from Brewer or from someone else, that I cannot recall.

Q Do you recall Mr. Rugh ever telling you that Mr. Brewer had formerly been employed at Inslaw?

A I don't recall that, no. He may have.

Q Do you recall Mr. Brewer, again now, focusing on this period before the execution of the contract, do you recall Mr. Brewer saying anything about his knowing Mr. Hamilton?

A I don't recall that, but he may have. I don't recall whether Mr. Hamilton participated in the negotiations or not. Obviously, if Mr. Hamilton personally participated in the negotiation, then the two would have met, and I would have learned that.

Q Well, I know obviously if they both participated they would have met during those negotiations, but my question is, did Brewer ever tell you that he knew Mr. Hamilton prior to these negotiations?

A I don't recall how or when I learned that.

Q But at some point, you did learn that he and Mr. Hamilton knew each other well before this contract began?

I don't mean you learned it before the contract began, but you learned at some time that Mr. Hamilton and Mr. Brewer had known each other for a number of years before this?

A I learned it sometime.

Q Did you learn that in the first several months of the contract or within the first few months that the contract was in effect? I know you can't pinpoint it.

A I could have, but I don't recall.

Q Do you think you learned it in the first year that the contract was in effect?

A I think I did.

Q Did Mr. Rugh ever tell you that Mr. Rugh and Mr. Hamilton had known each other for a long time?

A I don't recall. I don't think so. He may have,.

Q Now, when Mr. Rugh became involved in the precontract negotiations in early 1982 or, any event, the time preceding the execution of the contract, would you say that he expressed enthusiasm for the PROMIS software? Did he ever express enthusiasm about the software to you?

A Brewer or Rugh?

Q Brewer.

A Brewer. During the competitive negotiations?

Q Yes.

A I don't recall. In other words, I requested formal technical evaluations of the proposals received. I received formal memoranda back addressing strong and weak points of those proposals, and I don't think Brewer signed them. I think that was by Goodrich.

Q Pat Goodrich, I take it she was a technical person?

A She was -- Brewer replaced Pat Goodrich as program manager.

Q All right. Well, apart from any written memoranda, my question is do you recall Brewer ever expressing any enthusiasm about the PROMIS software during this period of time?

A I don't recall it.

Q Do you recall Mr. Brewer criticizing the PROMIS software at any time during this precontract period?

A I don't recall.

Q Do you recall Mr. Rugh expressing any enthusiasm for the PROMIS software during that precontract period?

A Formally he signed the technical evaluation report which stated that the proposal as submitted by

INSLAW, subject to some clarifications, is technically acceptable, and he either prepared -- I don't know whether he signed it or Pat Goodrich signed it alone, but he was instrumental in seeing that the proposal is good.

Q So that, at the very least, he felt the proposal was satisfactory from his perspective at that time?

A Correct.

MR. KELLOGG: I'm going to ask the reporter to mark this as Videnieks Deposition Exhibit 1, please.

(The document referred to was marked Videnieks Exhibit No. 1 for identification.)

BY MR. KELLOGG: (Resuming)

Q Mr. Videnieks, if you take a look at what has been marked as Videnieks Exhibit 1, and if you will look at page 2-153 -- I take that back. Make it 152.

I guess, first of all, I'll just tell you that this document was a part of INSLAW's response to the RFP.

A Original proposal or amendment afterwards?

Q Original proposal.

Can I just ask you to look it over generally, first of all, and tell me if you have any recollection of ever seeing it before? This is just a part of it, not the whole thing.

(Pause.)

I didn't mean to limit your review of this to page 152. I got ahead of myself.

The question is do you recall ever seeing this whole thing before?

A If this is an INSLAW proposal, I have not read it but I have seen it.

Q Go ahead and read it over to see if you have any recollection of ever seeing it before.

(Pause.)

A I read page 2-152.

Q Well, my question, I guess, is in light of that do you have any recollection as you sit here today if having received what's been marked here as Exhibit 1 as a part of INSLAW's response, initial response, to the RFP back in late '81 or early '82, whenever it was?

A It appears to be a part of INSLAW's proposal.

Q I want to call your attention to -- well, first of all, on page 2-152 there is a section beginning with B. It is labeled System Enhancements and New Modifications and describes various enhancements and modifications.

In particular, I call your attention to the last sentence on page 2-152, the sentence that begins, "In addition to the specially funded enhancements, improvements funded by other sources and developed and accepted for inclusion in the software supported by INSLAW will be made available to the U.S. Attorneys Offices."

Do you have any recollection as you sit here today of being aware of this part of the document when you received it or after you reviewed it?

A I don't specifically recall the number of pages which you have placed in front of me. I do recall the data rights issue as negotiated and the positions taken by parties generally.

Q I guess my question is do you recall it being an issue at this point in time?

A What point in time?

Q The time of INSLAW's initial response to the

RFP.

A During the proposal evaluation stage? We're looking at an undated piece of paper.

Q But I'm telling you as just you can assume for the sake of argument that this was a part of INSLAW's response, initial response to the RFP. I don't have a precise date, but it would have been sometime, I take it, in early '82 before the contract was executed. Correct?

A I didn't hear your question. It's difficult to follow. There's no question mark at the end. It's a statement, and I have difficulty following you, sir.

Q You have testified that you remember the data rights issue. My question simply is do you recall INSLAW's calling your attention to the fact that the system they proposed to deliver to the Department under the then proposed contract would include privately funded enhancements?

MR. COOPER: You're asking that question not related to this document?

MR. KELLOGG: I am asking it, yes, unrelated to the document.

BY MR. KELLOGG: (Resuming)

Q Do you recall that ever coming to your attention?

A I recall the part of the negotiations that dealt with data rights and the fact that the government demanded and received in the contract unlimited rights to data delivered under the contract.

Q You're not answering my question.

A This sentence does not jump out at me from three or four or five years ago.

MR. COOPER: Nor does that sentence say anything about privately funded enhancements, I would add.

BY MR. KELLOGG: (Resuming)

Q Just answer my question, and I'll try to make it simple and concise.

My question is do you recall INSLAW calling to your attention before the contract was executed on March 15, 16, whatever it was, 1982, that they intended to provide software that included privately funded enhancements?

A I specifically don't recall that.

Q Would you deny that they made you aware of that, sir?

A I think in the documentation there is reference to during the negotiation process both sides took positions, and I think that INSLAW may well have taken such a position in their written material.

Q So you very well could have been aware that they contended that this was what they were going to do during the negotiation stage?

A I could have been aware.

MR. KELLOGG: I ask that this be marked as Videnieks Exhibit 2, please.

(The document referred to was marked Videnieks Exhibit No. 2 for identification.)

(A brief recess was taken.)

BY MR. KELLOGG: (Resuming)

Q Mr. Videnieks, if you could take a look at what's been marked as Exhibit 2. It appears to be, the first page of it appears to be an undated letter to INSLAW signed by yourself attaching a number of -- several pages that contain a number of questions.

Just look that over and tell me whether you've ever seen it before.

A I've seen this, yes.

Q Is this letter plus the attachment that is appended to it, did you send this letter to INSLAW in response to their initial response to the RFP?

A Yes.

Q Even though it doesn't have a date, down at the third paragraph from the bottom that you ask that they provide you the clarifications and so forth by the close of business January 13, 1982.

A Right.

Q I assume from that that this letter would have been dated sometime before January 13, 1982?

A Correct.

Q Now, were you involved in the preparation of the attachment, Mr. Videnieks?

A No. I may have added to it, cleaned it up. Well, that's involvement but not from the technical point of view.

Q I take it that you would have read it before you sent it over with your cover letter, isn't that right?

A Sure.

Q All right. If you take a look at page 3 of the attachment, the item marked Task 9, Support and Maintenance and subpart B, there is a question there. "Why does the offeror consider the data base adjustment software to be proprietary?"

Do you remember reading that question when you reviewed that document before you sent it over to INSLAW, sir?

A I don't specifically remember that question alone, but I do remember the letter and the attachment.

Q Is it fair to infer that this question, this is question 9B in the attachment, was a result of the statements that INSLAW had made in its initial response to the RFP on page 2-152 that I called your attention to earlier?

A The attachment relates to the proposal.

MR. COOPER: To the specific pages?

BY MR. KELLOGG: (Resuming)

Q If you will notice, take a look at the front of what was marked as Exhibit 1, the first page. You notice it says Task 9, Maintenance and Support?

A Correct.

Q And if you turn to page 2-152, it says B, letter B, System Enhancements and New Modifications.

A Correct.

Q Well, if you look back to page 3 of the attachment to Exhibit 2, that refers to Task 9, System and Maintenance, Part B.

Now, in light of all that, my question is is it fair to infer that this question 9B on page 3 of the attachment was a result of the materials that I referred to here on page 2-152 of Exhibit 1?

A The question is directed to Task 9 of INSLAW's proposal.

Q It's addressed to Section B of Task 9, isn't that right?

A Yes. It appears to be. It is numbered B.

Q In Section 9B of INSLAW's response, they did mention, among other things, in addition to the specially funded enhancements, "improvements funded by other sources and developed and accepted for inclusion in the software and supported by INSLAW will be made available to the U.S. Attorneys Offices."

That language is contained in there, isn't it?

A Yes, sir. You were reading it, right?

Q Yes.

MR. COOPER: In Exhibit 1.

MR. KELLOGG: In Exhibit 1.

BY MR. KELLOGG: (Resuming)

Q Let me ask you this question. Can you point to anything else in Section 9B of INSLAW's initial response to the RFP as it is marked there, Exhibit 1, that would have prompted this question 9B on the attachment to your January '82 letter other than the language that I'm talking about?

A I'd have to read the proposal in detail. I have not read all the pages you gave me.

Q Well, read 9B.

A Okay, I'll take some time and read it.

MR. COOPER: Counsel, just to state for the record, I believe it was you, counsel, who inferred that A, B and C under Task 9 relate to the specific subsections. I don't know whether or not that inference is valid because each of the sections, it might have just been like a 1, 2, 3.

(Pause.)

BY MR. KELLOGG: (Resuming)

Q Do you remember the question?

A No, please restate it.

Q The question is after reviewing Section 9B of INSLAW's initial response to the RFP as it is contained there in Exhibit 1 before you, can you point to any other part of that Section 9B of the initial response that would have prompted the question set forth at Task 9B, page 3 of the attachment to your letter to INSLAW, in January of '82?

MR. COOPER: I object to the form of your question, counsel. The witness did not point to that sentence that you referred to. You pointed to that sentence.

So to the extent that your question assumes that the witness has referred to that sentence as part of the answer, there is no predicate laid for it, and the form of your question is improper.

MR. KELLOGG: I'm not saying he did point to it. Obviously I pointed.

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INSLAW's [illegible]
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that would have prompted [illegible]
9B, page 3 of the [illegible]
in January of '82?

MR. COOPER: I [illegible] question, counsel. The [illegible] sentence that you referred to. [illegible] sentence.

So to the extent that [illegible] that the witness has referred to [illegible] of the answer, there is no predicate [illegible] the form of your question is improper.

MR. KELLOGG: I'm not trying [illegible] it. Obviously I pointed.

My question is can he point to anything else in INSLAW's proposal or response, initial response in Exhibit 1, Section 9B of that that would have prompted this question 9B at page 3 of the attachment to Mr. Videnieks' letter except the sentence that I had referred to earlier.

MR. COOPER: I make the same objection. I'm not trying to tell you how to ask your questions, but perhaps maybe to ask the question if there's anything i this section that he can recall that prompted that.

MR. KELLOGG: Your objection is noted. I wil stick with this question.

THE WITNESS: I don't know what prompted the question, but I don't see anything else in there.

MR. KELLOGG: I ask that this be marked as Videnieks 3.

(The document referred to was marked Videnieks Exhibi No. 3 for identification.)

BY MR. KELLOGG: (Resuming)

Q I ask you to review that, Mr. Videnieks, what's marked as Exhibit 3. It's a letter to you, a copy of a letter to you from Dean Merrill dated January 14, 1982, together with what's labeled Amendment to Proposal.

I can save you some time. If you turn to page 9 of the attachment which deals with under Section B there that deals with Section 9B of the proposal.

For the record, the discussion in the attachment of Task 9 begins at the bottom of page 8.

Does that appear to be -- The section I referred you to on page 9, does that appear to be a response to the question under Task 9B that was in thue attachment to your earlier January '82 letter to INSLAW?

A Yes.

Q Would it be fair to say that in this document what's marked here as Exhibit 3 INSLAW was asserting that it had proprietary rights in its software?

A At this point in contract negotiations, INSLAW's position appears to reflect that position.

Q If you look specifically in that page 9, subsection B there, the sentence beginning "subsequent to May 1981", and not just the sentence but that whole paragraph, did that apepar to be an assertion by INSLAW that its software contained privately funded enhancements?

A The first sentence states, makes a statement as to when INSLAW began receiving funding.

Q From nonfederal sources, isn't that right?

A Right.

Q The second sentence goes on to indicate that they made certain data base adjustments under that funding, the nonfederal funding; isn't that right?

A That's what it says.

Q So my question is it was clear at that point that INSLAW was claiming that their software included privately funded or nonfederally funded enhancements; isn't that right?

A At that point in the negotiations they took that position.

Q Now, during this period of negotiations prior to the contract, prior to the execution of the contract, do you recall a session in which Mr. Brewer was critical of Inslaw's work?

A Prior to award of the contract?

Q Yes.

A No.

Q You wouldn't deny that he may have made a statement during some of those meetings that was critical of Inslaw's work, would you?

A During the negotiations of the contract that led up to the award of the particular contract we're talking about?

Q Yes.

A I don't recall him making any kind of a statement like that.

Q But I say, you wouldn't deny that he made such a statement. You just don't recall it, that's your testimony?

A I would probably deny that he made it to me.

Q Or in your presence?

A I don't recall it. I don't recall it in a very strong manner.

Q Do you recall, in words or substance, Mr. Brewer saying words to the effect that prosecutors in Michigan and in Colorado didn't think much of Inslaw's work, or they didn't think it was very good, or words to that effect?

A I don't recall that. This would have been in negotiations with Inslaw?

Q That's correct, during the negotiation sessions attended by representatives of the government and Inslaw.

A I don't recall that.

Q Do you recall Mr. Brewer making statements like that at anytime?

A About -- no. About Michigan.

Q Not about Michigan or Colorado. Do you recall him making statements that he didn't think much of Inslaw's work or being critical of Inslaw's work at anytime?

A At any time prior to award of the contract?

Q At anytime?

A When we had difficulties with the

implementation of the word processing sites, where Inslaw fell significantly behind the contract schedule, there were discussions among concerned personnel, expressing concern about the fact that Inslaw had fallen behind schedule.

Q And Brewer was among those?

A Sure, he was the manager. He was responsible to see that that promise was implemented on time.

Q And so he expressed criticism of Inslaw at that time, is that right?

A He commented on the unfortunate fact that the contract had slipped significantly.

Q That's being critical of Inslaw, isn't it?

MR. COOPER: Objection, counsel.

THE WITNESS: It's being critical of performance under the contract.

BY MR. KELLOGG: (Resuming)

Q I want to go back for a minute to this Exhibit 3. When you received this from Mr. Merrill, what did you do with it?

A I forwarded this material to the technical evaluation panel.

Q And did you have any further involvement in their evaluation of this response to the questions?

A Probably I asked the technical evaluation panel to make a statement as to whether Inslaw's proposal is now technically acceptable.

I think at first the basic proposal was conditionally acceptable based on clarifications of certain points.

Q Now, do you recall at any point during the pre-contract negotiations, any discussion with anyone on behalf of Inslaw in which they, the Inslaw people, objected to the -- I guess I would call it the standard government data rights clause that had been contained in the RFP?

A In the RFP, the clause, the data rights clause contained in the RFP remains in the contract.

Q Was there a different data rights clause contained in the initial solicitation document?

A The solicitation document contained a schedule article.

Q What is that?

A It's an order of precedence. It would take precedence over the boilerplate clauses in the contract.

Q Does that mean it was different from what was in the RFP, the data rights clause in the RFP?

A There were two provisions of the RFP that dealt with data rights. The data rights clause which currently remains in the contract, and a schedule article which contained a sentence which Inslaw felt would restrict their rights to market, promise to other people.

Because of that concern of Inslaw's during negotiations, the schedule article was excluded. It was agreed to exclude it from the actual contract.

Q And was something else substituted for the scheduled article?

A Nothing. Inslaw's basic concern was not data rights, but the ability to market.

Q If they didn't have the data rights, they couldn't market it, could they?

A You should read that article, sir. It's three sentences.

MR. KELLOGG: All right. Mark this as Exhibit 4, please?

(The document referred to was marked Videnieks Exhibit No. 4 for identification.)

BY MR. KELLOGG: (Resuming)

Q Take a look at Exhibit 4 if you will.

Mr. Videnieks, I see that we have got an obvious mistake in the second page, because I see it's something that has a date of August 11, 1982.

MR. COOPER: Can we just rip that out? Can we rip page two out?

MR. KELLOGG: That was not intended to be a part of that, and if we just discard it, we will start over again.

MR. COOPER: There are some other attachments to it.

MR. KELLOGG: After the signature, just take that out also. That's a mistake.

You should end up with a three-page letter dated March 1, 1982, to you from Mr. James Kelly, then general counsel of Inslaw.

BY MR. KELLOGG: (Resuming)

Q Is that a copy of a letter that Mr. Kelly sent to you on March 1, 1982?

A Yes, sir.

Q Now looking at page 2, paragraph labelled with the Roman number IV, rights in data.

A I'm looking at it.

Q And it says there, the rights in data clause as found in the RFP, section C, award/contract, comma, article 12, shall be deleted.

Now, does this ring any bells with you as to what it was that was deleted? Do you recall this?

A I don't have the contract in front of me, but I believe article 12 was deleted as a part of the total negotiation package; it was deleted.

Q You had indicated it was your recollection that there were two provisions in the RFP that dealt with data rights.

One was what you called the data rights clause, and the other was something you called a schedule article?

A Which is article 12, referred to here. I believe it's 12.

MR. COOPER: Do you want to break here and get the RFP to examine him with after lunch?

MR. KELLOGG: No, let's mark this as the next number.

(The document referred to was marked Videnieks Exhibit No. 5 for identification.)

BY MR. KELLOGG: (Resuming)

Q Now if you take a look at what's been marked as Exhibit 5, just look that over and tell me if you've ever seen it before?

A I've seen it.

Q Can you identify that for me, what it is?

A It's clause 74, rights in data, rights to technical data and computer software, which was in the RFP and is in the resulting contract.

Q And is it your testimony that the article 12, at least your recollection is, that the rights in data clause referred to in Mr. Kelly's March 1 letter in the RFP, section C, article 12, that was to be deleted, your recollection is that's a different clause from this one that became clause 74 in the contract?

A Yes.

Q And what to your recollection did the article 12 -- what in substance did that provide for?

A I would like to see it. But what I recall from the negotiations is that problems with the second sentence, the middle sentence of that short provision, which seems to restrict the contractor's ability to independently market PROMIS.

And as a part of the total negotiations, the contract was negotiated as a package, it was give and take on various issues, we agreed to take that article out.

Q And in testimony earlier that in the contract as it was eventually executed in March of '82, that the government had unlimited data rights to the data supplied to them?

A Yes, sir.

Q Look here under the definitions in clause 74(a)sub8 down at the bottom of the first page there.

You see the definition there of limited rights?

A I see it.

Q If you turn to page 116 down at the bottom, parenthetical 2, captioned, limited rights.

A I see it.

Q In your understanding, was there any part of these data, the rights of the data, as to which the government had any limited rights?

A No, unlimited as to everything.

Q What is this referring to here when it says, limited rights?

A The clause was written for all situations, to cover multiple situations. I clearly marked out the part of the clause that deals with limited rights, or any kind of restriction.

Q Now, when you say you marked it out, turn over to page 117, is that your handwriting there, where it looks to be N slash A, under the caption, limited rights legend?

A Yes.

Q And then is that your N slash A again underneath there, explanation of limited rights data, identification method used?

A Yes, right. Correct.

Q And I guess turning over to page 118, up at the top of the page, restricted rights legend. Is that and then parens 2 little i at the bottom of 116, it speaks there in terms of technical data pertaining to items, components or processes developed at private expense.

A You are reading under limited rights.

Q Yes, that's what I say. And that doesn't indicate there that it has to be identified anywhere else, does it, when they talk about data provided, developed at private expense?

A The section, limited rights, does not apply to this contract. The section, restricted rights, does not apply to this contract.

MR. COOPER: I object to the form of your question. Having looked at it, since technical data is defined different than computer software under the contract, and the section that you read with respect to private expense relates to technical data as opposed to computer software.

MR. KELLOGG: Off the record.

(Discussion off the record.)

MR. KELLOGG: Mark this as Exhibit 6.

(The document referred to

was marked Videnieks Exhibit
No. 6 for identification.)

BY MR. KELLOGG: (Resuming)

Q Mr. Videnieks, I show you what has been marked here as Exhibit 6 for your definition. What appears to be article 12, labelled data rights, is this, in your recollection, the data rights provision that was contained in the original RFP that was agreed to be deleted as reflected in Mr. Kelly's letter to you of March 1 of '82?

A Yes.

Q And what is there in that language that would have prevented the contractor from selling the materials to a third party?

MR. COOPER: Objection, the question calls for a legal conclusion. I don't mind you asking the witness which sections he understood from his conversations Inslaw was concerned about.

MR. KELLOGG: I take it, as included in all my questions of this sort to him about his understanding of the contract, I recognize he's a nonlawyer. I was only asking his understanding in light of his earlier testimony.

MR. COOPER: I'm just trying to preserve the record, Mr. Kelly. I'm not trying to interrupt your question.

THE WITNESS: I don't know which particular -- I mean, I would be happy to guess what Inslaw thought.

BY MR. KELLOGG: (Resuming)

Q Okay, I just want your best recollection.

A I think they may have thought, may have had problems with the sentence which begins with, the contractor shall neither retain nor produce for private or commercial use any materials furnished or produced under this contract.

To the best of my recollection, that may have been the clause, the sentence, that they had a problem with. And --

Q Mr. Hamilton calls my attention to the fact that in the deposition that Mr. Kelly gave in this case he indicated he testified that it was his recollection that in the course of these negotiations involving yourself among others, leading up to the execution of this contract, in March of 1982, that he used the example on this data rights issue, among other things, that Inslaw, for example, wanted the right to be able to market its software to the Pentagon.

And that was one of the things they were trying to preserve.

Do you recall Mr. Kelly using such an example in any of the meetings that you attended?

A I don't recall that, no.

Q Would you deny that he used such an example?

MR. COOPER: Objection.

THE WITNESS: If I don't recall, I don't recall. I can't deny, I don't think.

BY MR. KELLOGG: (Resuming)

Q Now, I've got before me what appears to be the full RFP. As a device to aid and expedite this, do you have a recollection, as you sit there, Mr. Videnieks, as to where the clause that became clause 74 in the final contract, where within the RFP that would normally be included?

A Towards the back.

MR. KELLOGG: Let's go off the record.

(Discussion off the record.)

BY MR. KELLOGG: (Resuming)

Q Now, let's move on for a moment.

You get the contract signed. In the course of these discussions, I believe you indicated that Inslaw initially, their cost proposal was somewhere, $15-, 16-, 17-, $18 million, I forget what you testified, but in any event you said it was 5 or 6 or more million above what budgetary requirements that the government had; is that correct?

A That's correct.

Q And ultimately, through the negotiation process, it was reduced, their cost proposal was reduced to the $10 million roughly that was set forth in the contract; right?

A Right.

Q And eventually Exhibit 4, I think, shows what the exact numbers were.

And in arriving at that reduced number, did the Depaertment undertake to agree to provide some personnel in some of the sites where the software was going to be installed in order to reduce the manpower demand on Inslaw so that its costs could be reduced?

A I have difficulty understanding your question, because I don't think we furnished people for performance of the contract.

Q Well, my question to you is, do you recall in the discussion, in the course of this process, of Inslaw attempting to bring its costs down and reach an agreeable number, an agreeable price for the contract?

Do you recall the government agreeing to provide some on-site personnel to perform some parts of the service that Inslaw had originally intended to perform in order to cut the cost down?

A No, what the government -- I remember Inslaw bringing up the point about the availability of systems managers, that they would be there at the -- to meet the implementation schedule, to be there around that time, to be on board.

Some had not been hired yet, but that is not -- they were to be government personnell working for the government and not performing the contract effort, or anything envisioned under it.

Q I understand. But did the government agree, as part of the negotiation process, agree to provide those systems managers in place at the appropriate time in order to reduce Inslaw's costs?

A No, sir. Inslaw expressed concern that the implementation schedule under the contract would be negatively affected by the government not having hired all of the systems managers yet.

The government was in the process of hiring people identified as systems managers. And then Inslaw was afraid that this might not happen, and could impact negatively on their contract performance.

Q And one way it would impact negatively is that it would drive their costs up; isn't that right?

MR. COOPER: Objection. Are you asking the witness, is that what they said, or are you now asking him to speculate?

BY MR. KELLOGG: (Resuming)

Q I'm asking you, is that in sum and substance what they said and why they were concerned about it?

A I imagine Inslaw was probably concerned about costs and fee, because fee was linked to performance also.

Q And to the extent that their costs were forced up, it might adversely affect their fee, too, isn't that right?

A A fee was also linked to meeting schedule.

Q All right. And I take it the department did assure them, in response to these expressions of concern, that it would make sure that these system managers were hired in a timely manner?

A I think that is reflected in the contract; if not in the contract itself, then the last -- the latest correspondence preceding the contract award.

Q And do you know from your own knowledge, in fact, as the contract went forward, whether the government fulfilled that commitment?

A I really don't know for a fact whether there were problems in hiring these people or not, or whether in order for any event to affect contract performance, there has to be a demonstrated -- the effect has to be demonstrated in this procedure that kicks in.

Q Was it demonstrated to your understanding?

A I don't remember the nonavailability of program managers becoming an issue. I don't specifically remember having to modify the contract, and

I don't remember the contractor requesting that the contract be modified for that reason.

Q But you do recall that in the negotiation process that led up to the contract that the government did make that assurance that they would get these people on board in a timely fashion?

A As I say, I think that provision is reduced to writing.

MR. KELLOGG: Let's mark this, and these are two documents together, as Videnieks Exhibit 7. Mark the first one 7, and make the next one behind it 7A

(The documents referred to were marked Videnieks Exhibits No. 7 and 7A for identification.)

BY MR. KELLOGG: (Resuming)

Q Now, Mr, Videnieks, if you just look there at what has been marked as 7 and 7A, and then I have some questions for you.

A Yes, I've looked at 7A, but it's a fairly lenghty document. It appears to be Inslaw's internal correspondence, which I am not familiar with.

Q Well, my question is, do you recall having seen either Exhibit 7 or 7A before?

A I think I've seen -- I've seen them, but I have not been involved in any detailed discussions. I don't even know whether I have read very carefully 7A.

MR. COOPER: If I might go off the record for a second?

(Witness confers with counsel.)

THE WITNESS: I definitely did not see this around the timeframe when it was done, April 1. It's probably in my file, which is three big boxes. But I couldn't very well repeat this. If you asked me to summarize this, I couldn't.

I probably glanced at it, and that was it. I don't know when I would have. I don't know when it actually became a part of my file, if it is in that file.

BY MR. KELLOGG: (Resuming)

Q Just so that the record is clear in a general sense, Exhibit 7 is a cover letter from an attorney Roderick Hills to Stanley Morris, who is an associate deputy attorney general, and it's dated April 2, 1982.

And it purports to enclose a memorandum which is marked as 7A, and is dated April 1, 1982, and it is from Mr. Hamilton to a Mr. Rogers, who, for the record, I will indicate is an associate in Mr. Hill's law firm, describing various enhancements to the PROMIS software, and issues relating to that.

Now, irrespective of whether you may have ever seen 7A, the Hamilton memorandum, did there come a time when you became aware that this issue and this memo had been submitted to Mr. Morris by representatives of Inslaw?

A I think somewhere along the line over the past several years a copy of this attachment worked itself to me and got in my file.

Q When, to the best of your recollection, did you first learn that Inslaw, through Mr. Hills, had contacted Mr. Morris about this issue April 2, 1982?

A I can't even begin to guess.

Q Would it have been within 30 days of that, do you think?

A I can't begin to guess within days, months or years. I guess I can, years; it's '82. I don't know when. I was not party to that exchange of documents.

Q I'm trying to find out when, if at all, when you became aware.

A It's in my file. I recognize -- it's attached to something else, maybe attached to letters written by Inslaw. But it's definitely an attachment somewhere.

MR. KELLOGG: Mark this as Exhibit 8, please.

(The document referred to was marked Videnieks Exhibit No. 8 for identification.)

BY MR. KELLOGG: (Resuming)

Q Mr. Videnieks, if you would just read over what has been marked as Exhibit 8, please?

(Pause.)

Q Now, Mr. Videnieks, Exhibit 8 appears to be a copy of three pages of handwritten notes that you made; is that correct?

A Yes.

Q Now, I'm going to have to go through these entry by entry here, and as it will become apparent, I have reason to believe that these dates that you've got on here or appear to have on here refer to 1982, although it does not say that.

Now, looking at the first entry there, which starts, 1:00 p.m. 4/14, does that say, meeting in Brick's office?

A Yes.

Q And then does it have names underneath that that say, Brick, Karen, Jack?

A Yes.

Q Dick, D.H., that is De capital H?

A Yes.

Q And PV?

A Yes.

Q And over at the side, to the right, does that appear to say Morris?

A It appears to say Morris slash S.

Q And then underneath that to the left, does that appear to say Rooney?

A I think it says Rose. Maybe it's Rooney.

Q Was Mr. Rose --

A Or Rosen. It could be Rosen.

Q Well, down to the right there, it says AAG policy.

A Yes. Which would not have been Rooney. It would not have been Rooney.

Q Would it have been Rose?

A I think so. This is a little while ago. This is sometime ago.

Q In any event, back to the identification of the people, would this have indicated that you attended a meeting on April 14th at 1:00 p.m.?

A Yes.

Q And that Brick Brewer was there?

A Yes.

Q And Karen who?

A Krug.

Q And I take it Jack Rugh?

A Right.

Q And Dick DeHahn?

A Yes.

Q And PV would be yourself?

A Correct.

Q Do you recall attending such a meeting, sir?

A I can't recall. This is nearly eight years ago. I can't recall the specific meeting. I'm not saying the meeting did not take place. Obviously it

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took place because I wrote it down.

Q As you sit here today, sir, do you have any present recollection as to what year these notes relate to?

A I guess it was 1982.

Q All right, and would these notes indicate that Mr. Morris was present at the meeting?

A I never met Mr. Morris, so I don't think he was there.

Q All right. Might it indicate that something to do with Mr. Morris was discussed at that meeting?

A It might.

Q Do you recall ever discussing any meeting with these people, anything to do with the issue raised in Exhibit 7 and 7A on April 2 of '82 with Mr. Morris?

A No.

Q Now if you will just read that next entry beginning Monday, or Mon. 3:00 p.m. Just read that to me, and I want to ask you what it means, so far as you can recall.

A Monday, 3:00 p.m. -- negotiations at LEAA re DJRS contract overruns, call Dave S., Room 1268.

Q All right. Now, first I would ask you whether that wouldn't indicate OJRS instead of DJRS?

A It could be O. It could be O. It's O. It should be O.

Q Do you recall as you sit here today who Dave S. is?

A I believe Dave S. was a contracting officer at OJRS.

Q Do you have a present recollection that there is a separate contract between OJRS and INSLAW?

A Yes.

Q Presumably, then, this would reflect a note about a meeting that you had regarding overruns on that contract with OJRS and INSLAW?

A Yes.

Q Do you have any present recollection of what was discussed at that meeting?

A My recollection is that under the OJRS contract, one task concerned EOUSA, and that task was for enhancements and that the contractor had notified OJRS that there may be an overrun or OJRS had assessed performance under the contracts and concluded that there would be an overrun which would affect EOUSA.

Q All right. Now, moving down to this next note there marked two, "tomorrow A.M. call Dave S. and set up review of DJ or OJRS contract", is it your recollection that you made this note in a meeting with Dave S.?

A No, I can't recall whether I was in a meeting or as a result of a telephone conversation.

Q Do you recall yourself reviewing the OJRS contract with Mr. Dave S.?

A I don't think it was with Mr. Dave S. but eventually I did review that contract.

Q All right. Now on that next line there, "D.C. contracts Task 9, Phase 2", what does that mean?

A One of the contracts that INSLAW had concerned the D.C. Court system, and I can't recall now what Task 1 and Phase 2 were.

Q Would it be fair to conclude that, whatever it was, that this D.C. Court contract was different contract from the OJRS contract?

A It may have been, or maybe it was a distinct task after that contract.

Q Can you read the name? It looks like a name underneath Task 1, Phase 2?

A Bob Whiteley.

Q No, no, the first line immediately under Task 1, Phase 2. It looks like a Z.

A It looks like Zelenski, but I can't recall who Zelenski would have been; and the second one I can't read.

Q Move then to the next entry beginning F/U Bob Whiteley.

A Right.

Q Tell us what that means.

A "Followup Bob Whiteley re overhead rates, proposal or progress. Status --".

Q Are you sure it doesn't say "stress"?

A You're correct. "Stress need for detailed look at overhead pool, people, et cetera."

Q Does that jog your recollection as to what that -- why did you make that note?

A I don't know why I would have made it in April but I know at one time in that time frame and continuously we were concerned about ability, the contractor's ability to perform the contract within target costs, and there were efforts to control costs or to talk to INSLAW to have them control the costs of performance of this contract.

One of the areas in which we concentrated was the overhead area.

Q Well, do you recall in this early period Mr. Brewer ever raising the issue with you of whether INSLAW's overhead costs might be out of line?

A I don't recall that. I think I was, I and the audit staff people, were the ones concerned with overhead more than Brewer would have been.

Q Well, would this be a note that you made to yourself to call or speak to Bob Whiteley in the future?

A It means a followup. It means a followup to a prior attempt at communication or a prior conversation.

Q But would it reflect that you actually talked to him and this was said, or this was a note to yourself that you should followup and say these things to him?

A It may be a note to myself.

Q Move to the next one, again outlined in an outline and again marked 4/14.

What does that indicate to you?

A "Called Dave S., telephone number. He will talk to Stan (the chief)" and then "-- going to INS Friday re 1 and 2 above. He will call back, call me back."

Q All right. Now, I take it when you say call Dave S., that's the same Dave S. at OJRS that you referred to up above earlier?

A Correct.

Q He apparently told you that he will talk to Stan?

A Who was his boss.

Q He was going to talk to him about the points that you had up above there, number 1 and number 2, namely the overrun on the OJRS contract and the need to review the OJRS contract?

A Right.

Q Now, do you recall who Stan is, what his last name is?

A I believe his last name is Stirman, S-t-i-r-m-a-n.

Q He was being transferred to the immigration service?

A Yes. I believe he is currently a contracting officer at the INS. He may have been at OJRS and transferred from there to INS.

Q Now, down to the next entry there marked E.

Could you read what that says, please?

A "Discussed INSLAW's PROMIS 2 memo. DeHahn said that the Civil Division will probably get the action. Termination for convenience discussed. I advised against it. DJRS discussed. See 1 and 2 above."

Q Again, can we assume it is OJRS?

A Yes. I don't know why I kept saying D, but it is O.

Q All right. Now, what is your recollection that that is all about?

A I don't know which PROMIS 2 memo we're talking about. It could very well be the one that was shown earlier as one of the exhibits here, but, like I say, I don't recall it.

Q You say could very well be the one. I take it you're referring to the one marked 7A?

A It could be. It could be. It appears to be entitled that.

MR. COOPER: It's not entitled.

THE WITNESS: Well, it's some memorandum.

BY MR. KELLOGG: (Resuming)

Q 7A is entitled PROMIS '82, and your notes says

"PROMIS 2".

A There may be a different memorandum, then, but apparently it could have been a memorandum of that nature and I don't specifically recall it.

Q Well, now, when you say here in your note discussed INSLAW's PROMIS 2 memo, with whom? Obviously, I take it you discussed it with DeHahn?

A Right.

Q Do you recall such a meeting discussing this?

A Not specifically, no, and I cannot recall who else would have been there.

Q Do you think anyone other than DeHahn would have been present at such a discussion?

A Normally I would not meet with DeHahn by myself.

Q All right. Now, where did DeHahn work? What was his role?

A I believe he was an attorney but in a nonattorney slot with Justice Management Division at that time.

Q So he work, so far as you recall, at EOUSA?

A Eventually he worked at EOUSA. I don't think he worked with EOUSA at that time.

Q When your note indicates that DeHahn said that Civil Division will probably get the action, what do you think that meant?

A I think it probably meant they would receive the PROMIS 2 memorandum for review.

Q Don't you think it probably means that they would receive whatever action that Mr. Morris might request in response to the PROMIS 2 memo?

A No.

Q Is it your testimony that your belief is that this had nothing to do with the request of Mr. Morris that is reflected in Exhibit 7 and 7A?

A It's my testimony that the PROMIS 2 memo as in front of DeHahn at that date was to be referred to the Civil Division for action. Apparently it contained some legal issues which would normally be handled by the Civil Division.

Q Well, I'm really asking you a question. I mean, I tell you it is a fact and Mr. Morris has testified that in response to receipt of this letter, Exhibit 7, and the memo, 7A, he did make inquiry of the

Civil Division for preparation of their response and certain research involved.

Now, does that refresh your recollection any as to whether or not this meeting that you have a note here of could have been referring to that inquiry by Mr. Morris?

A I don't know anything about Morris. I was not in his deposition. I don't know what he said to who or why.

Q I understand you are not Mr. Morris, but your testimony is you have no recollection that this note was made in response to a discussion of what was anticipated then to be a request from Mr. Morris?

A No, I did not function at those levels. I was administering the contract at a working level basically, and these are very high government officials.

Q Now the next phrase here, "termination for convenience discussed", now what contract do you think you were discussing terminating for convenience?

A I don't recall. Obviously at this point I don't think it was the PROMIS contract.

Q Well, this contract was informally referred to as the PROMIS 2 contract, wasn't it?

A No, sir.

Q Was there another contract referred to as a PROMIS 2 contract?

A No, sir.

Q So as far as you are concerned, there was never any contract that you know of referred to as the PROMIS 2 contract?

A Yes, sir.

Q All right. As you sit there today, do you have any recollection whatsoever what contract it was that you were discussing terminating for convenience?

A I don't specifically recall. I would -- since this was '82, it was a month or so into the life of this contract, that we were no talking about terminating the PROMIS contract.

MR. COOPER: Could you tell him which one you think it might relate to?

THE WITNESS: It may be the OJRS contract. In other words, if there was a serious overrun over there, that would be one of the courses of action.

BY MR. KELLOGG: (Resuming)

Q Now, but this note here would seem to be tied together, wouldn't it, with the statement "discussed INSLAW's PROMIS 2 memo"?

MR. COOPER: Objection.

BY MR. KELLOGG: (Resuming)

Q You tell me that's not a fair inference?

MR. COOPER: You're not talking inference. You're talking facts, and the witness just gave you his best recollection of what the statement relates to.

BY MR. KELLOGG: (Resuming)

Q I'm trying to get your best recollection as refreshed as I can.

You've testified that the first line there says "discussed INSLAW's PROMIS 2 memo", and then it says, the next line, "DeHahn says that Civil Division will probably get the action".

I take it that that second line presumably refers to action on the PROMIS 2 memo; right?

A I think that's what DeHahn meant.

Q Then my question is is it your testimony that termination for convenience discussed that that does not relate to anything to do with the PROMIS 2 memo?

again your handwriting, N slash A?

A Yes.

Q So it's your testimony, is it, that by putting those three markings in there, NA for not applicable, you intended to delete the application of this entire limited rights section, beginning on page 116, paragraph parens 2?

A s and Inslaw agreed that we have unlimited rights to all items delivered under this contract. And Inslaw agreed to delete the applicability of any sort of limitations or restrictions.

And it was my intent to do so, and did that by marking out -- by putting these NAs on the clause.

MR. KELLOGG: I guess this is a good time to break for lunch.

(Whereupon, at 12:55, a luncheon recess was taken.)

AFTERNOON SESSION

(2:00 p.m.)

Whereupon,

PETER VIDENIEKS

resumed the witness stand and, having been previously duly sworn by the Notary Public, was examined and testified further as follows:

EXAMINATION (RESUMED)

BY MR. KELLOGG:

Q Mr. Videnieks, you are still under oath. We are back on the record after lunch.

Now you have testified here that Mr. Merrill in a January 14, 1982 letter to you, that was marked as Exhibit 3, in response to the questions that you had sent him, that he made the assertion that Inslaw, the software Inslaw was going to provide had some privately funded enhancements in it.

I guess my question is -- strike that.

And you've testified also that the contract as ultimately executed March 16, 1982, gave to the government unlimited data rights as a result of this clause 74 that was marked as Exhibit 5, correct?

A Correct.

Q And I guess my question to you is, from the time that Inslaw responded on January 14 of '82 that there were privately funded enhancements in its software, until the execution of the contract, March 15, 1982, in which you say there were these unlimited data rights agreed to, who did you deal with from Inslaw in these negotiations?

A Dean Merrill, Jim Kelly, John Gizzarelli. I don't recall Bill Hamilton being there. That's about it.

Q So to the best of your recollection, at any rate at this time, it was these three people, Dean Merrill, Jim Kelly and John Gizzarelli?

A I'm trying to think who else may have been there. I don't recall whether Murray Hannon was there or not.

Q All right. NOw, to the best of your recollection, how many meetings did you have or did you attend with any of these people from Inslaw between January 14, 1982 and March 15 or 16, when the contract was executed?

A There were numerous telephone conversations, primarily with Kelly. I don't recall the number of meetings, but it was a fluid process of give and take during those two months.

Q All right, so would it be fair to infer from that that your primary contact from Inslaw was Jim Kelly during this negotiation period?

A Mine, yes.

Q You say there were a number of meetings. Can you give me an idea of roughly how many? Are we talking about more than a dozen?

A Including telephone conversations also?

Q Just meetings, face-to-face meetings is my question right now.

A I can't recall; I really can't. There were more telephone calls, obviously, maybe on a daily basis, or even more than daily basis at times.

And if one would -- I don't know whether the -- I think when Inslaw submitted the initial proposal, we met for the first time at Inslaw, basically asking them to rethink it and resubmit it.

I don't know whether that was within the time period that you mentioned or not. And the meetings lasted through right to the date of award of the contract.

Kelly would come to my office individually. Also there were meetings where groups of people were. But I can't begin to guess.

Q However meetings there were, how many times do you recall discussing with Mr. Kelly, either face to face or on the telephone, and again, I'm focusing now just in this period between January 14, 1982 and March 16, '82, when the contract was signed, how many times do you recall discussing with Mr. Kelly anything to do with data rights?

A I remember discussing all issues, all terms and conditions of the contract, as they came up for negotiations during that time period.

I don't recall specifically when during that time period I would be limiting the discussion to data rights, or even including the data rights issue in a general situation, except I can say that during that two-month period, or even a broader period, those negotiations took place.

Q Well, when I take it, as you sit here today, I mean you have a clear recollection that as of the time you signed the contract, there was an agreement that the government would obtain unlimited data rights to the software that was provided, or to be provided, by Inslaw under the contract; isn't that right?

A Very clear.

Q My question is, how many times do you recall ever discussing that subject prior to the execution of the contract with Jim Kelly?

A I can't recall a number.

Q Would it be as meany as a half a dozen, do you think?

A I don't want to guess, sir.

Q I take it it would be less than a hundred, wouldn't it?

MR. COOPER: Objection, the question calls for speculation, and the witness has stated he can't recall precisely how many meetings.

MR. KELLOGG: Objection is noted.

You know I have the right to test his recollection.

MR. COOPER: What validity does it have if you ask him to guess. He's under no obligation to try to guess for you.

MR. KELLOGG: I'm trying to test his recollection. And you know as you sit there that I'm entitled to do that.

MR. COOPER: Well, ask him if he recalls. Don't ask him to guess, if you would.

MR. KELLOGG: I'm not asking him to guess.

BY MR. KELLOGG: (Resuming)

Q I take it that you do recall that you did not have in excess of a hundred discussions with Kelly about this data rights issue during this period of times, isn't that right, sir?

A I don't think I had a 100 discussions with Kelly on that issue.

Q Do you think you might have had as many as 50?

A I don't know.

Q You could have?

A I could have. It could have been mentioned off and on. We dealt on an almost daily basis over a period of two months, about six years ago, sir.

Q Do you recall any specific conversation --

A Also, I could have talked with Dean Merrill, or anybody for that matter. I would be purely guessing to try to put any kind of estimate on that.

Q Let me ask my questions.

Do you recall any specific conversation either with Kelly or Merrill or anybody else on behalf of Inslaw, in which they agreed to concede this point, that is, the unlimited data rights to the government that you say you have a clear recollection was agreed to?L

A At one point or another, I went through the contract, the finalized form of the contract, and discussed with Inslaw personnel, probably Kelly, point by point, every condition in that contract.

So there was a clear meeting of the minds that every term was understood. And only after that did both sides put the contract through their respective channels and sent it on.

Q All right. So my question is, do you have a specific recollection of discussing and coming to agreement with Kelly about the unlimited data rights issue; just that issue?

A Yes, as a part of agreeing on the total contract.

Q And do you remember what Kelly said?

A Well, yes, I think the whole issue, the data rights issue, reached -- became a prominent point in negotiations fairly close towards -- in the days preceding the final execution of the contract. And it was a group processe.

There was actually a point on the negotiation table, similar to where we sit here, and the data rights issue was discussed by numerous personnel in detail, and as a result of that, we moved that language from the RFP, and there was a clear understanding that we had unlimited rights.

Q And your recollection is that people on behalf of Inslaw expressed some concern about something to do with the data rights issue?

A Marketability. They were concerned about the government prohibiting, which I think is what the RFP language will read when we get it, prohibiting Inslaw to market PROMIS independently to other sources.

Q To other customers?

A Yes.

Q All right, and it was your understanding that the modification that you agreed to would have resulted in Inslaw's retaining the right to market it to third-party customers?

A And us having unlimited rights.

Q Now, turn if you will to Exhibit 5, the copy of clause 74 as it was contained in the contract.

Now I'm going to try to understand precisely, or as precisely as I can, what it is that your understanding was.

What was it you understood the contract gave unlimited rights to the government in?

A Shall I read?

Q Well, I'm asking for your recollection. I can read the contract. I'm just asking for your --

A That is my recollection, what is written there.

Q Written where?

A The clause on -- government's rights, unlimited rights, page 115, clause 74.

Q Clause 74?

A 74.

Q But you're talking about specifically it would subparagraph parens little b, government's rights?

A Right.

Q Number one, unlimited rights?

A Yes.

Q Is it your understanding that that clause there gave the government unlimited rights in technical data -- strike that -- in software that Inslaw may have developed with private source funding?

A Computer software required to be originated or developed under a government contract, or generated as a necessary part of performing the contract.

If it's a necessary part of the performing contract, and it's unlimited under the contract, then unlimited rights.

Q Do you contend, or is it your understanding, that if there were any privately funded enhancements that Inslaw had made to the software, is it your understanding that the contract required for its performance that Inslaw provide the government with those private funded enhancements?

A We did not request -- we learned for the first time about these privately funded enhancements, or it became an issue, sometime after the contract award.

Q Well, you say that you learned for the first time, but as I have pointed out, and I thought that you had acknowledged, back here in Mr. Merrill's letter to you, dated January 14, 1982, which is marked as Exhibit 3, at page 9, Mr. Merrill indicated there that in response to the question, what proprietary rights are you talking about, he responded by saying that there was some privately funded enhancements.

A There was one point in a two-month period, lengthy negotiations, that at that time Inslaw took that position.

When the contract was executed, it was our agreement that whatever is delivered under the contract, we would have unlimited rights to under the contract.

Q Well, Mr. Videnieks --

A You don't have everything there. You are presenting selective information.

Q Well, I take it what has been marked here as Exhibit 5, I mean, this is the entire data rights clause as it was contained in the contract, the actually executed contract, isn't it?

A Yes.

Q All right, and do you maintain, or is it your understanding, that somewhere in other parts of the contract that there is an actual requirement on Inslaw that it deliver software containing its privately funded enhancements in order to comply with its duties under the contract?

A Section C of the contract is the work statement. It tells the contractor and the government what shall be done under the contract, the general provisions of the contract of which clause 74 is a part of, apply to the work statement of the contract.

Q That isn't an answer to my question, I don't think.

What is your understanding as to whether the contract as executed required Inslaw to deliver software including its privately funded enhancements in order to comply with the contract?

A Inslaw, under the contract, was required to install, maintain and provide training services for PROMIS. The requirement was expressed in Section C of the contract.

Some other nonperformance oriented provisions, like the general provisions or what we call boilerplate, apply to the deliverable items identified in section C of the contract.

Q Are you saying you don't recall?

A I said what I said.

Q Obviously, Mr. Videnieks.

A Do you agree what I said was correct?

Q I agree that the contract says what it says. Yes, I don't dispute that the contract governs.

My question is, I'm asking for your recollection of what took place, and your understanding.

A My recollection is that all terms and conditions of the contract were, over a two-month period, discussed in detail with the contractor; and that the finally executed document represents the complete meeting of the minds, and sets forth the rights of the parties.

Q Now, with respect to the unlimited rights in the software provided, is it your understanding that the government, having acquired these unlimited rights, the government would be entitled, under the terms of this agreement, to disseminate the software to other offices within the Department of Justice apart from those in the United States Attorneys' offices specified in the contract elsewhere?

A Where are unlimited rights defined?

Q Number seven on the first page, 114.

A Seven. Unlimited rights means the right to use, duplicate, or disclose technical data for computer software in whole or in part in any manner and for any purpose whatsoever, and to have or permit others to do so.

Q So that would mean that to the extent that the government acquired unlimited rights under this clause 74, they would be entitled to copy that software and distribute it anywhere to other offices in the Department of Justice, if they saw fit?

A Or to other government contractors.

Q Just answer my question first. They could distribute it anywhere within the Department of Justice they wanted to?

A Yes.

Q And if they wanted to, they could distribute it to any other government agency that they wanted to, the Department of Defense?

A Yes, sir.

Q Customs?

A Yes.

Q Treasury?

A Yes.

Q They could distribute it if they wanted to free of charge to the United States court system, could they not?

A Yes.

Q And as a matter of fact, they could distribute it to state and local governments, if they wanted to?

A Yes, sir.

Q And they could grant to those parties the right for them to make copies themselves?

A I don't know about that.

Q I think it says that, and to have or permit others to do so.

MR. COOPER: Objection, the question calls for a legal conclusion. The witness has said he doesn't know.

MR. KELLOGG: All right.

BY MR. KELLOGG: (Resuming)

Q And as a matter of fact, under these unlimited rights, the government would have the right to take the software and give it to IBM; isn't that right?

MR. COOPER: Objection.

THE WITNESS: What am I supposed to do with an objection?

MR. COOPER: Objection, the question calls for a legal conclusion.

MR. KELLOGG: I'm just asking for his understanding.

THE WITNESS: It's very broad language, yes.

BY MR. KELLOGG: (Resuming)

Q The answer is yes, they would be able to give it to IBM, any other competitor, whatever you wanted?

A Yes.

Q And I gather that the answer that you'd give that all of this could be done by the government under this unlimited rights clause, that could be done no matter how much private funding might have been involved by the contractor in developing a particular privately funded enhancement; isn't that right?

MR. COOPER: Objection; the question calls for a legal conclusion.

MR. KELLOGG: I'm asking for his understanding.

MR. COOPER: You're asking for a legal conclusion.

MR. KELLOGG: I'm asking for his understanding as the contracting officer under this contract.

MR. COOPER: It calls for a legal conclusion.

BY MR. KELLOGG: (Resuming)

Q You can answer.

A To the items with respect to which we have unlimited rights.

Q The unlimited rights would be completely unaffected by the amount of money that might have been spent by the contractor in developing privately funded enhancements; that's my question.

MR. COOPER: You're talking about this contract, the software furnished under this contract; is that correct?

MR. KELLOGG: That's correct.

THE WITNESS: All items delivered under this contract were delivered to us with unlimited rights.

BY MR. KELLOGG: (Resuming)

Q And you would have those unlimited rights, regardless of whether Inslaw has spent $10 in developing privately funded enhancements contained in it, or whether they had spent a billion dollars; isn't that right?

A If Inslaw chose to deliver those items, and agreed to the contract as written and delivered those under the contract as written, yes.

Q Let me ask one last point on this clause 74 as it was executed, Exhibit 5.

Now, do I understand you correctly, Mr. Videnieks, that your understanding and what you believe the parties intended, was that this entire section that would begin on page 116, towards the bottom, with the parens 2, limited rights, an entire section extending all the way over to I guess it would be --

MR. COOPER: If you want to pick up the restricted rights portion, I think it's over to 118.

BY MR. KELLOGG: (Resuming)

Q I guess my question is, your testimony is that the parties intended, in your view, to exclude everything in this subparagraph parens 2, marked limited rights, starting at the bottom of page 116, and extending down to I guess the bottom of -- extending down to just before parens 3, marked restricted rights, on page 117; is that right?

A As being nonapplicable, yes.

Q Now, how about the subparagraph 3 there, restricted rights? Did the government have any restricted rights?

A Also, it's nonapplicable.

Q So that again, that would be the deletion if you will will continue right on page 117, all of page 118, all of page 119 --

MR. COOPER: I know you're not trying to be unfair to the witness, but I think in the middle of page 118 you have a subsection C there which is a different provision.

MR. KELLOGG: All right.

MR. COOPER: I tink it would be subparagraph 3 and 4.

BY MR. KELLOGG: (Resuming)

Q So that it continues on page 118, I guess I see there where it starts. Paragraph 4, parens 4, no legend shall be marked on -- you didn't intend to delete that, I take it?

A I think you should probably be looking for C. It's deleted up to C.

Q So starting where it says, material covered by copyright?

A Yes.

Q That was not deleted?

A Right.

Q Is there any particular reason, sir, that you just marked N slash A in the blanks relating to limited rights legend and restricted rights legend, as opposed to either marking not applicable to the other paragraphs of the clause or striking them out with a line or something?

A No particular reason, except that I think that if one were to limit rights and restrict rights, the data would have to be identified, and that would be the place where it would be identified.

Q Except th8at if you look at subparagraph two, A Can't terminate a memo, sir.

Q I understand that.

MR. COOPER: Counsel, object to the question because it is misleading, and you haven't established any foundation that the PROMIS '82 memo, which has been denominated Exhibit 7A, relates in any way to the Executive Office PROMIS implementation contract, and you are suggesting that it does in your question to the witness. I don't think you have laid a foundation for that point.

BY MR. KELLOGG: (Resuming)

Q Did you ever recall hearing the OJRS contract with INSLAW referred to as the PROMIS contract?

A I don't think I did.

Q From what you know about it, do you think it would have been referred to as the PROMIS contract?

A I'm familiar with the one task under that contract to the extent that I did review the language in the contract pertaining to that task, and that dealt with PROMIS enhancements.

Q All right. Now, your note indicates here that as regards termination for convenience being discussed that you advised against it; correct?

A That's what the note indicates.

Q Do you think that you would have been -- or, first of all, do you recall your advice being solicited regarding whether to terminate for convenience the OJRS contract?

A I don't recall specifically, but it could have been. This note may refer to the termination of that contract or that the termination of that contract was discussed.

Q All right. Now, out at the left of your note you marked up there by "discussed INSLAW's PROMIS 2 memo", you marked with a circle and a letter A, and then down there farther down you have a letter B.

Now, what does that B refer to as you look at it now?

MR. COOPER: I think what you're getting at, just so the witness isn't misled, what line of his notes does the B refer to?

MR. KELLOGG: Yes.

MR. COOPER: What would be the first line that relates to the letter B?

THE WITNESS: The first line could be the parenthetical expression, or it could as well be OJRS contract discussed. I can't, at this point I can't tell. The B appears to be more below the line than above the line.

BY MR. KELLOGG: (Resuming)

Q Well, in any event, after the line that has the phrase "I advised against it", it does say, "OJRS contract discussed, see 1 and 2 above." Is that what that says?

A Right.

Q It's your testimony that as best as you can recall you still think the termination for convenience being discussed and referred to above that would have related to the OJRS contract?

A Which line are you referring to?

Your question is which contract, in my opinion, in my recollection, that termination for convenience discussed, that phrase applies to?

Q Yes.

A I can't specifically recall, but I think it probably concerns the OJRS contract.

Q Even though you've got the note about the OJRS contract being discussed after you've stated termination for convenience discussed?

A Yes.

Q Now the parenthetical phrase you referred to, quote, apparently, Hamilton agreed to put a lid on EOUSA task and define a deliverable; however, now they're trying to back out.

A Yes.

Q I take it that refers to the OJRS contract?

A I think so.

Q Turning to the second page of your notes, what does the next entry there marked C, what does that say?

A DC contract discussed, phase two proposal under technical evaluation EOUSA not clear whether they will proceed.

I told them about Kelly's call that delay slash noncontinuation will affect overhead rates. Jack Rugh and Brick will meet with DC people Thursday to decide what to do.

Possible alternative, task one of phase two only.

I think we are talking about three contracts. The DC contract must have been a separate contract.

Q All right, and again, would it be apparent that this discussion that you've recorded here in these notes would have at least included Mr. DeHahn and perhaps others that you don't know who; is that right?

A I can't say as to whether DeHahn was still present or not.

Q But would you think, in light of the reference there to JR and Brick in this note C, do you think it's likely that they were present at this part of the meeting?

MR. COOPER: Objection, counsellor, you haven't established a foundation that this was a meeting as opposed to telephone calls or as opposed to Mr. Videnieks' notes of several telephone calls and/or meetings.

I don't think there has been any testimony that that is clearly established.

BY MR. KELLOGG: (Resuming)

Q You have a note at the beginning of the whole thing that says, DC contract discussed. And it's marked C.

It sure looks like it would be a continuation of a discussion that was begun at point A; wouldn't that be fair, Mr. Videnieks, you tell me?

neat. So this could have been a summarization of events.

Q And you don't know, as you sit here, you just can't recall whether this reflected a meeting that you attended, or a telephone conversation, or some summary of events?

A I don't like -- on most issues under this contract, there was a series of telephone calls and meetings surrounding issues as they arose, and that was the case here.

Q All right. Move down to entry D. Does that say, pilot contract discussed?

A Yes.

Q And would it appear that this is yet another contract?

A It's another contract.

Q So if you include the PROMIS implementation contract one that is the focal point of the lawsuit, that may not have been discussed but that's one contract.

Second, you've got the OJRS contract.

A Right.

Q Third, you've got what is referred to here as neat. So this could have been a summarization of events.

Q And you don't know, as you sit here, you just can't recall whether this reflected a meeting that you attended, or a telephone conversation, or some summary of events?

A I don't like -- on most issues under this contract, there was a series of telephone calls and meetings surrounding issues as they arose, and that was the case here.

Q All right. Move down to entry D. Does that say, pilot contract discussed?

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A It's another contract.

Q So if you include the PROMIS implementation contract one that is the focal point of the lawsuit, that may not have been discussed but that's one contract.

Second, you've got the OJRS contract.

A Right.

Q Third, you've got what is referred to here as a DC contract?

A Right.

Q And fourth, you have something referred to as a pilot contract?

A Right.

Q So that overall, that's possibly a total of four different contracts, correct?

A Correct.

Q Now, read me that note on the pilot contract. What does it say after that?

A Pilot contract discussed. Not clear as to what has been delivered. JR, Jack Rugh, and CS; I don't know who CS would have been right offhand, will determine completion status March 14.

Now, these notes must be after -- they're either assembled incorrectly here, or I wrote them incorrectly. But they're not chronological, it would appear.

Q Well, but I guess, I don't know, but one possibility might be that Rugh and whoever CS is were going to determine what the completion status had been on 314.

A That could have been.

Q Go ahead with the parentheses.

A I said to JR that cure notice could be issued with partial termination and reduction of fee for noncompleted items.

Q As you sit here, do you have any present recollection of discussion this pilot contract?

A Not specific recollection. I do remember that we discussed the pilot contract, because it was, at that time, still in an open mode, and had not been closed out.

Q But you were not involved as a contracting officer on any of these other contracts, except the PROMIS implementation contract, were you?

A I was involved in discussions.

Q I know, but you were not the contracting officer?

A I don't think I -- I was not the primary contracting officer. I may have assisted with some contract modifications, but I don't fully recall that.

Q All right, move to the next entry there. It's marked 4 slash 16. What does that say?

A Telephone conversation, Jack Rugh, meeting today with Rooney, DeHahn and Brick. They'll discuss proprietary PROMIS II letter.

Q Do you have any recollection of that telephone conversation with Mr. Rugh?

A NO.

Q Do you think it's likely that he was telling you there would be a meeting that day between Mr. Rooney, Mr. DeHahn and Mr. Brewer to discuss the proprietary issues raised in Mr. Hamilton's memo, the PROMIS memo that is marked as 7A?

A Or some other letter, but that topic.

Q Move to the next entry, 4/19. What does that say?

A Called DS.

Q Excuse me for interrupting. But just so I understand, would this DS be the same person probably as the Dave S that you have referred to in the first page?

A Could have been.

Q Over at OJRS?

A Could have been.

Q Go ahead.

A Knows nothing about negotiations. The

contracting officer who handled Inslaw contract is gone for three weeks. D knows nothing about OJRS counsel holding negotiations.

It looks like, AS --

Q I think it says, as far as he knows.

A Oh, as far as he knows, there are no negotiations. I can get copy of contract. I said I'll pick it up today.

Q All right. You think this referred to a conversation with this Dave S at OJRS regarding the Inslaw-OJRS contract?

A I think so.

Q And regarding any possible negotiations on that contract?

A That apparently someone was conducting.

Q Turn over to the next page, please. Up there at the top where it is marked, 4/19, what does that say?

A Tele con with Jack Rugh. There will be negotiations, contract number LEAA 006-79, EOUSA task, software enhancements.

Q Before you go any farther, you got that where you say, there will be negotiations, you have the words, will be, underlined.

Would that be a reference back to the preceding entry on the prior page on the same date, 4/19, when this DS tells you that he doesn't know whether there are any negotiations at all?

A I think it probably does.

Q So now Rugh is telling you that there will be negotiations, and presumably, he's talking about the same matter, the OJRS-Inslaw contract?

A This is for the first time that the contract number appears. If indeed this is the number of the OJRS contract, then that I guess would be the case.

Q Now move down there where it says -- does that say, Don Manson?

A Correct.

Q DM, who is Don Manson?

A He was the program manager at OJRS on some contracts, and also on the OJRS contract.

Q All right. Now, what's the next entry say?

A Monday, April 19, 1:30: OJRS library, preparations. 3:00 o'clock negotiations. Negotiations to be held by OJRS' counsel.

Q Now, do you think this is a continuation of your note of a telephone conversation with JR, Mr. Rugh?

A It could be.

Q And would it be him telling you that there would be meetings on these dates, that is to say, the same date, 4/19, kind of a preparatory meetings in the OJRS library at 1:30, and then negotiations at 3:00 o'clock?

A Normally, I would set those dates. The note appears to have no delineation. There is a gap here.

It could be two different annotations.

Q Well, I noticed your next note there at the bottom, at the bottom of that entry, indicates, negotiations to be held by OJRS' counsel.

A Okay.

Q Wouldn't he be the one who would set the date?

A He would be, if he would chair the negotiations, then he would set it.

Q And it might be that this was all being transmitted to you by Mr. Rugh, isn't it.

A It could very well be.

Q Now, what's the next entry after that?

A Meeting with DS at Dee's office. He could not locate file. Finally located at counsel's office by phone. Gorman, question mark. IA -- I don't know what that means, copy not available either.

I decided not to preempt 419 meeting by going up to counsel's office.

Q Now what's the date of this entry here?

A April 17.

Q So this appears to have been made before the entry at the top of the page which is marked 4/19?

A I can't explain that.

MR. COOPER: How have you concluded, counsel, that the entry at the top says 4/19 as opposed to 4/17?

MR. KELLOGG: Maybe I'm wrong. I thought he testified it was 4/19.

MR. COOPER: I think he would have testified as to anything you told him as to dates. It's hard to read it.

THE WITNESS: These pages apparently are not assembled correctly, because we keep jumping here from 16 to 19 to 17. So they are not in sequence.

BY MR. KELLOGG: (Resuming)

Q Well, in any event --

A It's definitely not a chronological chain of events here.

Q Do you recall meeting with this Dave S over at OJRS, and trying to find the contract file?

A I don't -- I know I had telephone conversations with them, DS. I don't recall meeting with him personally; I may have. I don't recall what he looks like.

Q Your last entry there, does that say, 4/19 JR called, meeting postponed to 2:30?

A That's what it says.

Q And that would be Jack Rugh calling you?

A Yes.

Q And would that refer to the meeting that you had made a note of earlier at the top of the page on 4/19?

A I don't know. I'm not putting much weight in these notes because they are not assembled properly. The dates are scattered all over the place.

Q Well, this is on the same page, though.

A If I made a note on the 19th, and then put a

Q Well, in any event --

A It's definitely not a chronological chain of events here.

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Q And that would be Jack Rugh calling you?

A Yes.

Q And would that refer to the meeting that you had made a note of earlier at the top of the page on 4/19?

A I don't know. I'm not putting much weight in these notes because they are not assembled properly. The dates are scattered all over the place.

Q Well, this is on the same page, though.

A If I made a note on the 19th, and then put a note on the 17th below the 19th again, it may be right. But as Mr. Cooper points out, your first note up at the top of the page may say 4/17, not 4/19.

Q It may very well, sir.

In any event, this bottom note would appear to be a reference to Rush calling you and telling you that the meeting he had earlier advised would be at 1:30 in the OJRS library on 4/19 was being postponed to 2:30?

A It could be.

MR. COOPER: Objection, lack of foundation. It might also have referred to the negotiation meeting which Mr. -- well, I guess that would not have been postponed.

Okay. I withdraw my objection.

(Recess.)

BY MR. KELLOGG: (Resuming)

Q Mr. Vicenieks, now your notes that we have been examining you about, appear to have made reference to a meeting to take place on April 19 in the afternoon, presumably 1982, at the OJRS office; is that correct?

A Could have been a telephone conversation. Didn't we discuss that before, trying to resolve whether it was a meeting or a telephone conversation.

Q Well, I guess the notes don't make clear, except that the bottom note there, at the bottom of the third page, it says, JR called meeting postponed to 2:30.

A Right.

Q So presumably, if that's what he was talking about, it was a meeting and not a telephone call.

A Right, but for which day.

Q In any event, do you recall attending a meeting at the OJRS office with Mr. Rugh, Mr. Brewer, perhaps this Don Manson that is mentioned in your notes, and a Bob Gorman?

A I don't specifically remember Gorman, but I remember meeting with these individuals that you just named and Inslaw personnel around that timeframe around approximately that subject.

Q I'm going to ask you some questions about what you recall about that meeting, whatever date it occurred.

What is your recollection of what transpired at that meeting?

A Can you be a little more specific, which area you are interested in?

Q I would just like you to take the thing as you sit here today and recall it from the beginning, to your recollection.

What matters were discussed, who said what, to the extent you can recall it here today.k

A I can't recall who said what. In general, the matters discussed were the EOUSA task under the OJRS contract and funding problems associated with it, or spending problems, maybe.

Unless I am prompted with some documents you can show me, some notes I may have taken that you may have, I can't remember anything really in detail; unless I am prompted, I really can't.

Q Do you remember making any notes of your own of that meeting?

A I usually do. The quality varies.

Q Well, we've got notes of yours, handwritten notes, that I've examined you about, right up to apparently just before the meeting on the same date, assuming it took place on April 19th; but we don't have any notes of that meeting.

Do you recall making notes of the meeting?

A I don't recall, but I may have.

Q If you did, do you recall destroying the notes at anytime?

A No, I don't.

Q If you had destroyed them, do you think you would recall it?

A I definitely would.

Q So you would deny that you ever destroyed any notes that you made of that meeting, if you had made any?

A Yes, and I would not appreciate such allegations, either.

Q I'm not alleging it; I'm just asking the question.

Now, do you recall, as you sit there, anything being discussed in this meeting about the matters that were addressed in Mr. Hamilton's memorandum that was marked as Exhibit 7A?

A Which meeting are you talking about?

Q I'm talking about what we assume was an April 19, 1982 meeting at OJRS, at which you were present together with --

A You are assuming --

MR. COOPER: Hold on, objection. Lack of foundation. As I recall the witness' testimony, he stated that he recalled being at a meeting which included both Inslaw personnel and OJRS personnel.

I don't know -- I don't think you've established any foundation that there was indeed a separate meeting at OJRS that only involved Department of Justice personnel.

MR. KELLOGG: I didn't intend to imply --

MR. COOPER: The meeting on April 19th was held -- oh I apologize, it was held at OJRS. Excuse me, that's what you were referring to.

MR. KELLOGG: That's what I'm referring to.

THE WITNESS: The meeting in which Inslaw participated?

BY MR. KELLOGG: (Resuming)

Q Yes, together with, as I said, yourself, Mr. Ruhe, Mr. Brewer, Mr. Manson, a Bob Gorman, and a John Wilson.

Do you recall such a meeting?

A I can't recall the faces of Wilson or Gorman.

Q I stand corrected. Also in attendance at this meeting, according to the notes we have, were Joyce DeRoy and Jim Kelly.

A Okay.

Q In any event, I understood you to say that although you didn't know exactly what day it was, you do remember going to such a meeting?

A I remember a meeting at OJRS with Joyce DeRoy there.

Q And with Mr. Brewer and the other people I mentioned?

A They probably would have been there, yes.

Q Now, my question is at that meeting at you recall, do you recall Mr. Brewer discussing anything about Mr. Hamilton's memo that was marked here as Exhibit 7A or the issues that are involved in that, the enhancement proprietary rights INSLAW claims?

A I don't recall discussion of that memorandum. I think the issues may have been raised there. I think the issues at that meeting deal with primarily were cost growth under the OJRS contract, EOUSA's budgetary problems, interrelationship with the new contract and existing contracts.

You know, the other issues I don't specifically recall as having been discussed. I would primarily be concerned with the issues that I just enumerated.

Q Well, you could be concerned with any issue relating to --

A Right, primarily. I knew what my priorities were at the time, and I just told you what I would be concerned with.

Q Yes, but my question to you is if anything regarding the PROMIS implementation contract that you were the contracting officer on was discussed, you would be concerned with that, wouldn't you?

A But anything gets prioritized. Priorities to me at the time were cost concerns.

Q You would have been concerned about cost concerns?

A Are you tell me what I would be concerned about?

Q I'm asking.

A Please form it as a question.

Q I am. You answer the questions I put, and I have to ask them.

A So that I can understand them.

Q I'll try to do that, and if I don't then I'll try to make it so you do.

A Please do.

Q Would you not have been concerned also with matters relating to cost under the PROMIS implementation contract if they were discussed?

A Sure.

Q Do you recall during this meeting that we're talking about, do you recall Mr. Brewer getting particularly exorcised at any point in the meeting?

A Not really, no.

Q Well, do you recall during the meeting whoever the presiding official was, Mr. Gorman I gather --

A If he were there. I don't recall if Gorman was there or not. I cannot visualize his face. Neither can I visualize what Wilson looked like. I don't know who the senior official was aside from Manson.

Q Well, whoever the official was, I take it it was somebody at OJRS, from OJRS, was the presiding offical?

A Since it took place in their facilities, I would assume so.

Q Whoever it was, do you recall Mr. Brewer getting excited, for lack of a better term, to a point where the person recessed the meeting and asked Mr. Kelly and Ms. DeRoy to leave the room?

A Do I understand you to say that DeRoy anc Kelly were thrown out?

Q No, no, no. I'm just saying that do you recall as a result of Mr. Brewer becoming excited and emotional, for lack of any better description, at a particular point in the meeting that the presiding official kind of, well, the presiding official simply asking Mr. Kelly and Ms. DeRoy to step out of the room for a few moments until things got calmed down?

A No, but a practice of caucussing in these kinds of meetings is common. I don't recall it.

Q Do you recall any instance where Mr. Kelly and Ms. DeRoy were asked to step out of the room for any reason during that meeting?

A No, I don't.

MR. KELLOGG: Mark this, if you will, as the next number.

(The document referred to was marked Videnieks Exhibit No. 9 for identification.)

BY MR. KELLOGG: (Resuming)

Q Take a look, if you will, at what is marked as Exhibit 9. I ask you to just read that over, please, Mr. Videnieks, to yourself.

(Pause.)

A Okay, I've read it.

Q Now, this, Mr. Videnieks, is an internal INSLAW memo regarding this meeting that we've been examining you about prepared by Mr. Kelly and Ms. DeRoy, as you can see, a couple of days after the meeting.

And as I read through it, I think I may have been mistaken in asking you about the people from OJRS having asked Mr. Kelly and Ms. DeRoy to leave the room, because it appears here in the memo itself that Mr. Gorman, Mr. Wilson and Mr. Manson, after the conclusion of their matters, left the room themselves, at least according to the memo.

A Could be. I don't recall.

Q Do you recall any such division of the meeting dealing first with the OJRS matter and then the OJRS people leaving and a continuation of the meeting regarding the PROMIS implementation contract?

A I don't recall any. I don't recall, no, sir.

Q Well, the memo, as you can see, recites essentially about nine points that the two people involved indicate were made in this second part of the meeting, if you will, by Mr. Brewer.

Now, do you recall Mr. Brewer making any of these points that are listed in those nine points at the meeting?

A I think Brewer was concerned about cost performance under the existing contracts. He was concerned about a budget. Sometimes he gets emphatic about issues. They are serious issues.

I don't recall -- what's the word -- tirade and scurrilous referred to in the memo. Sometimes Brick makes his points emphatically like I do.

Q Do you recall Brick making these points as specified here emphatically on that occasion?

A I don't recall specifically this heavy artillery. What I do recall is discussion of the interrelationship of these contracts.

Q So you do recall Brewer discussing --

A That was the reason for the meeting, yes.

Q -- the PROMIS implementation contract?

A The pilot contract, the implementation contract, the OJRS contract. That was the purpose of the meeting. My notes indicate that, so those topics were discussed.

Q All right, and do you recall Mr. Brewer saying early in the meeting that a lot of his concern, his or his and Rugh's, arose from a memo by Bill Hamilton that was circulating in the Department?

A That I don't recall specifically. It could be this would be another memorandum aside from the one that was introduced earlier, aside from this PROMIS 2 memorandum.

Q I'm not saying -- I'm assuming that it's the same one, and that it would have been at the same time, April 2, that this memo, 7A, was delivered to Mr. Morris.

A That memorandum could have been discussed. I don't specifically recollect it.

Q Do you recall, and this is -- strike that.

Ms. DeRoy testified that it was her recollection that at this meeting an OJRS official did ask both herself and Mr. DeRoy to leave the room temporarily until Mr. Brewer could regain his composure.

Do you have a recollection of that occurring?

A I don't recall that. I don't recall any caucussing by either side.

Q And you don't recall any outburst that would be consistent with such an event as this, outburst by Brewer?

A I don't recall that, no.

Q But you do recall that Brewer was making his points emphatically about this?

A I think his concerns were extensive, and he was emphatic.

Q Do you recall him saying that his concerns --

A I don't specifically recall anything, but I think the topics discussed were of such a nature where he could very well have been emphatic.

Q But do you recall him saying that the source of his concern was a memo by Bill Hamilton circulating in the Department?

A No.

Q Did you ever have an occasion to either meet or speak on the telephone with an attorney by the name of James Rogers who was an associate of Mr. Hills, the attorney who wrote the letter to Mr. Morris that was marked here Exhibit 7?

A To the best of my knowledge, no.

Q Did anybody from the Civil Division ever discuss with you aspects of the data rights issue that was raised in Exhibit 7 and 7A in the letter and the memo to Mr. Morris?

MR. COOPER: By way of clarification, counsel, you mean during this period of time? For example, not discussions I had with Mr. Videnieks in preparation for his deposition?

BY MR. KELLOGG: (Resuming)

Q Excluding discussions, obviously, with Mr. Cooper. Yes, I'm talking about in the period between April of '82 and I believe it's August of '82 when Mr.

Morris submitted or sent a response to this inquiry to Mr. Hills.

During that period, do you recall --

A I don't recall that. That does not mean -- that does not exclude the fact that it could have happened. I don't recall, no.

Q Well, do you ever recall either reviewing, seeing or hearing about a legal memorandum that was prepared in the Civil Division by a Mr. DiPietro?

A I think it's gone through my hands and probably it's in my file. I recognize the name.

MR. KELLOGG: Before I get to that, I want to ask that this be marked as 10 for identification.

(The document referred to was marked Videnieks Exhibit No. 10 for identification.)

THE WITNESS: I have not read it, but by appearance it does not ring a bell.

BY MR. KELLOGG: (Resuming)

Q You say you don't recall ever seeing it before?

A I don't recall. That does not mean that I don't have it in my file someplace.

MR. COOPER: Could you identify Exhibit 10 for the record?

MR. KELLOGG: For the record, Exhibit 10 consists of a cover letter from Mr. Rogers to Mr. Morris dated May 26, 1982 attached to a separate letter from Mr. Rogers to Mr. Morris also dated May 26, 1982, and the attachment is two and a half pages long, whereas the cover letter is just two sentences and one page.

BY MR. KELLOGG: (Resuming)

Q Now, your testimony is, Mr. Videnieks, that as you look at these, you don't have any recollection of ever having seen these before?

A The letterhead is familiar. Of course, the Stanley Morris name and position are familiar. The general topic I'm familiar with obviously, but I don't recall seeing this letter specifically. That does not mean it is not in my file.

Q Did there ever come a time that you learned that Mr. Hills had made an inquiry to Mr. Morris as reflected in Exhibit 7 and the attached memorandum 7A about the data rights issue? Did you ever learn that such an inquiry had been made?

A During the life of the contract, I became aware that several law firms of some stature or some senior attorneys with connections were contacting high DOJ officials, and this apparently is one of them.

Hills means nothing to me as a name. For example, Mr. Richardson would. That would be, to me, I would recall much better what Richardson was doing, but I would not recall if someone nor it wouldn't really impress me much, either. Just another attorney and another letter.

Q My question is not so much who it is, but it's a question did you ever learn that a request had been made of Mr. Morris on behalf of INSLAW to do anything regarding this data rights issue.

A Sometime during the administration of this contract, I received copies of letters concerning that issue and obviously became aware.

Q Do you recall becoming aware of this inquiry before Mr. Morris responded to the inquiry which was in August of '82?

A I cannot identify these events, put it in a time frame, because usually I was not in that line of communication. I was not, and I received copies significantly after the fact, routed down through various individuals. This is for your contract file.

Q Would I take it from that, then, that -- and you tell me whether this is accurate or not -- if you would take it from that, then, that you would have no recollection of ever being consulted by anyone in connection with the preparation of a response by Mr. Morris or anyone working pursuant to his direction, a response to the May 1 or May 2 inquiry reflected in Exhibit 7 and 7A?

A To the best of my knowledge, no.

Q And that so far as you can recall, if you ever did learn about the inquiry having been made, it probably could have been even after the response was actually issued?

A I did not receive the copies of any letters that I did receive as action items. Usually they were after the fact.

Q Now, did you ever hear from any source that or in the course of responding to this or preparing a response, I should say, to this inquiry that is reflected in Exhibit 7A, 7 and 7A to Mr. Morris, that Mr. Morris had requested that Mr. Brewer be excluded from any role in preparing a response?

A No.

Q You've never heard that up until today?

A I may have heard it. Similarly, there are letters in the file asking that I be removed from administering the contract. I have heard roundabout. I can't pin it down to a time frame or anything.

MR. COOPER: Listen to his question.

BY MR. KELLOGG: (Resuming)

Q Mr. Videnieks, I'm not asking you about hearing about INSLAW asking to remove Mr. Brewer. That's not my question.

My question is did you ever hear from any source at any time that Mr. Morris had requested that Mr. Brewer step aside and not have any role in preparing a response for Mr. Morris to give to this inquiry that was made --

A To the best of my knowledge, never.

Q Did you ever have any discussions about this matter, this issue with Mr. McWhorter?

A I don't think so, no.

Q The reason I ask that is that there is evidence from Mr. McWhorter that it was Mr. McWhorter who was asked to take the lead role in preparing a response, or take a lead role at least insofar as the EOUSA was concerned, to the exclusion of Mr. Brewer, and you don't recall any discussions with Mr. McWhorter about that subject?

A No.

Q Now, do you recall ever having any discussions with Mr. Brewer in which the subject of Mr. Morris' response to the request as set forth in Exhibit 7 was mentioned?

A Repeat that, please?

MR. COOPER: Can I make a suggestion, because I think that the various depositions to which you have referred will reflect that there were various responses to those letters, intermediate letters, that might help the witness, if you want to, to show him a copy of the August 1982 letter, and that may help him know whether he saw it.

(Pause.)

MR. KELLOGG: Would you mark this Exhibit 11?

(The document referred to was marked Videnieks Exhibit No. 11 for identification.)

BY MR. KELLOGG: (Resuming)

Q Would you take a look at Exhibit 11, Mr. Videnieks. That is a draft of a letter which I will tell you was sent to Mr. Hills in identical form as that by date of August 11, 1982.

First of all, have you ever seen that before or the subsequent letter based on that draft?

A Yes, I've seen -- I think I've seen this letter.

Q All right. Now, when I refer in my question to Mr. Morris' response to Mr. Hills, this is the response that I'm talking about, the one that was made based on this draft which is Exhibit 11.

My question is did you ever discuss Mr. Morris' response as set forth there in Exhibit 11 with Mr. Brewer?

A Ever?

Q Yes, ever.

A I may have, but I don't recall it.

Q Do you have any recollection of ever discussing the fact or the subject of Mr. Morris' response as set forth there in Exhibit 11 with Mr. Brewer?

A We may have discussed it. I probably discussed it with other people, too. But it was not my action item.

I may have discussed it. The answer is, I may have discussed it.

Q But I take it, if you did, you don't have any specific recollection of having discussed it with Mr. Brewer?

A Not a specific recollection.

Q Do you ever recall Mr. Brewer saying anything to you about this Morris response in Exhibit 11?

A He may have. I don't specifically recall it.

Q Do you recall him expressing anything critical of that response?

A I don't.

Q Do you recall anyone else who worked at EOUSA at the time being critical of Mr. Morris' response as set forth there in Exhibit 11?

A I don't recall that, no.

Q Do you ever recall Mr. McWhorter criticizing that response?

A No, sir.

Q Now, let me just ask you this as a hypothetical question.

If you had known during this period of time between April and August of 1982 that Mr. Morris had asked Mr. Brewer to step aside from any involvement in preparing a response to this question that resultec in Mr. Morris' August 11, '82 letter, would you have had any concern, as a contracting officer, with Mr. Brewer's continuing role as the program manager?

A No, sir.

MR. COOPER: Objection. You can answer.

THE WITNESS: No, sir.

BY MR. KELLOGG: (Resuming)

Q And why would you not have had any concern?

A The letter does not say that Mr. Brewer is going to be reassigned. It is not related to the matter.

Q In other words, I guess that if Mr. Morris had asked him to step aside for this particular part of it, but not for the rest of the contract, it wouldn't be of any further concern to you?

A I think as we previously discussed, at one point the civil division was charged with writing a letter.

Now another organization chose to write a letter on that topic.

Q Well, the civil division was asked to prepare the response, together with the executive office people's input, response, for Mr. Morris to give; isn't that right?

A Well, you tell me.

MR. COOPER: Objection; lack of foundation. I think the witness has stated he wasn't involved. I think that may explain in part the witness' answer.

Based on his testimony, he really wasn't involved with this process.

BY MR. KELLOGG: (Resuming)

Q All right, now, do you recall, Mr. Videnieks -- strike that.

I take it at some point in here in 1982 this DC pilot contract between Inslaw -- with Inslaw, that was terminated, was it not?

A No, sir.

MR. COOPER: Off the record.

(Discussion off the record.)

MR. KELLOGG: Back on the record

BY MR. KELLOGG: (Resuming)

Q Do you recall a contract between Inslaw and the District of Columbia, U.S. Attorney's Office, being terminated during this 1982 timeframe?

A I don't recall that, no.

Q Do you ever recall Mr. Brewer making a statement in which he in effect took credit for having that contract terminated?

A No, to the best of my knowledge, the D.C. U.S. Attorney's Office does not or did not have procurement authority.

So your question, the line of questioning is very unclear.

Q Does that mean that if there was a contract between Inslaw and the U.S. Attorney's Office -- strike that.

If there was a contract for Inslaw to provide services for the use of the D.C. U.S. Attorney's Office, that contract would have been with the Department of Justice; is that what you're saying?

A Yes, sir.

Q And my question is, assuming there was a contract, do you recall which was terminated, do you recall Mr. Brewer ever saying that he was the one who, in effect, got that contract terminated?

A I don't recall any contract with Inslaw -- that doesn't mean that there weren't any -- that was terminated for default or convenience other than the PROMIS contract which I was administering.

Q Now, there came a time, I believe in the fall of 1982, when Mr. Brewer made a request to the Justice management division that you be assigned fulltime to the executive office to assist in the oversight and implementation and so on of this PROMIS Inslaw contract; is that correct?

A I don't know.

Q Your testimony is that you don't know whether Mr. Brewer ever asked to have you assigned fulltime to the executive office of U.S. Attorneys to work on this contract?

A I don't know that, nor have I ever been assigned fulltime.

(A document was marked Videnieks Exhibit No. 12 for identification.)

BY MR. KELLOGG: (Resuming)

Q Take a look at what's been marked as Exhibit 12, please. It's two pieces of paper staplec together.

A Obviously, they made such a request. As a matter of fact, I am always, throughout my six years at the Department of Justice, supported other organizations as well as EOUSA, with EOUSA the primary organization I was supporting.

But the request obviously was made.

Q Now your testimony is that until I asked you this question here today, you had no knowledge that Mr. Brewer had in fact made the request?

A Now that I looked at it, the memo, either this one or that one, looks familiar. But as a matter of fact, I always worked on contracts from several organizations.

Q All right, now in the second page of that exhibit, the memorandum from Mr. Brewer to Mr. Tyson, in which he asked Mr. Tyson to send the first page, which is a memo apparently that he drafted, from Mr. Tyson to Mr. Rooney, who was then the assistant attorney general in charge of the Justice management division in which you worked.

Mr. Brewer says in his memo that the executive office had agreed to reimburse JMD in full for the cost of your services.

Did you have knowledge that that had taken place, or that a commitment like that had been made by EOUSA?

A Yes, a common practice. Civil division pursued a similar plan with another contracting officer, and I understand, another organization of Justice, OID, did the same thing.

And I understand the antitrust division did the same thing.

Q So that was a common practice, in your understanding?

A And I think to some extent -- I am no longer under such an agreement between organizations, but there may be other individuals.

Q But it's your understanding that such a practice was, at least at the time, a common practice within the department?

A It was a practice. Let's say, I was not the only one, throughout my six years with the Department of Justice, I was not the only contracting officer under such a plan.

Q Do you think it would be fair to describe that practice as extraordinary?

A I wouldn't describe it as extraordinary. I think it's a flexible approach to meet research needs.

Q Do you recall Mr. Brewer raising with you any concerns prior to this time here, September of '82, that your other duties were requiring that you spend -- that your other duties were such that you weren't able to spend sufficient time on the Inslaw contract?

A I recall from time to time that I would have to tell Mike Snyder, the COTR, or Jack Rugh, or Brick, that some actions would have to await so I could fulfill other tasks which were higher on the priority list, but not necessarily from EOUSA.

Q And other tasks, by that, you would mean other tasks --

A Procurements for other DOJ organizations.

Q Not involving Inslaw?

A Not involving Inslaw, correct.

Q And do you recall any specific tasks that Mr. Brewer wanted you to perform that you told him that they would have to wait?

A Well, for EOUSA I was administering three major contracts, two of them larger in dollar size than the Inslaw contract.

That was a fairly time consuming task. In addition to that, I had other non-EOUSA contracts to take care of, and there came times when I imagine it may have bothered Brick that I would do some other things.

Q But the reason that he is asking to you have assigned here doesn't have anything to do with the other EOUSA contracts that you were administering, but the PROMIS contract, isn't that right?

A Maybe it says so. Maybe you could point out to me where it says so.

Q Look on the second page of Exhibit 11.

A Which line?

Q Well, start right at the beginning. As you are aware --

A Well, I will read it again.

(Pause.)

A The first sentence basically reinforces what I just said, that we're not talking about one contract but about three.

Q Going to the third paragraph, if you will, starting where he says, these diversions, speaking about your other duties, these diversions have adversely affected our efforts at implementing PROMIS, because Mr. Videnleks, through no fault of his own, has been unavailable for consultation at crucial periods in the computer procurement, the word processor procurement, and in the administration of the Inslaw contract.

Now do the first two that he mentioned, the computer procurement and the word processor procurement, are they unrelated to the Inslaw contract?

A They are related. They are for the hardware, which the government furnished to Inslaw for performance of the PROMIS contract.

Q And then the last sentence says, in the latter concern, that is, the administration of the Inslaw contract, it is my opinion that the only way to maintain our schedule within budget is to rigorously monitor Inslaw's efforts.

Clearly in that last sentence he's referring specifically to the need to monitor Inslaw's activities under the contract; isn't that right?

A Sure.

Q Now, did there come a time in the fall of 1982 when you learned that Inslaw had changed banks, and made an additional borrowing from its then new bank?

A Fall or late fall, yes.

Q And how did you learn that, sir?

A I don't specifically recall, but I do remember that I was shown the instrument by Murray Hannon in EOUSA facilities, in that timeframe.

Q Is it your recollection that you became aware of this because Mr. Hannon showed it to you, or did someone else call it to your attention before that?

A There was a reason why Mr. Hannon came to our office and showed it to us.

Q And that action means that somebody on the government side --

A It may have been an auditor. It may have been --

Q Well, it would perhaps refresh your recollection to know that Mr. Whiteley, who I believe is the auditor, testified that he discovered this during this timeframe, during an audit, and that he made mention of it to you, I don't know whether alone or among others.

But does that ring any bells with you, sir? Do you recall Mr. Whiteley mentioning that fact to you?

A I don't recall him mentioning it to me, but that's probably how it happened.

Q When you learned of that fact, presumbly from Mr. Whiteley, or from whatever source, was that a cause of concern to you, sir?

A Yes, it was.

Q And why was that?

A It was shortly after award of the contract, and it was in violation of the advance payments provision of the contract.

Q All right. And why did you feel it was a violation of the advance payments provision of the contract?

A It was specifically against one of the provisions in that particular contract attached and if we had it in front of us, we could probably identify it.

My letters to Lockheed, which I issued at that time notifying them of the possibility that advance payments may be discontinued, refers to the specific contract provision.

Q And before you issued any letter regarding this advance payments -- strike that.

Just so that I can understand, what do you mean when you use the term, advance payments, in reference to this contract?

MR. [illegible]: I want to first make an objection, because that calls for a legal conclusion. Since the term, advance payments, as opposed to other types of payments under government contracts, is a term of art and has certain legal meanings and is subject to countless legal opinions with many precedents as to the distinction between advance payments and other types of payments under government contracts.

But other than that, I'll let the witness answer.

MR. KELLOGG: I just want to know what he means by it.

THE WITNESS: Payments in advance of occurrence of cost -- in advance of reimbursement for incurrence of cost, established in accordance with a specific schedule geared to the contractor's cash flow needs.

BY MR. KELLOGG: (Resuming)

Q Well, I want to ask you to repeat that.k

MR. COOPER: It sounds like one of those legal opinion.

MR. KELLOGG: It sounds worse than a legal opinion, which usually is bad enough.

BY MR. KELLOGG: (Resuming)

Q You say it's a payment?

A You see we have a cost reimbursement contract. Normally, under that type of contract, the contractor incurs costs or books them, and then submits a voucher and gets reimbursed.

In this case, we went a step further and moved up a month ahead of that time, advance the contract for cash so that we could incur those costs.

Q So that I understand, you don't mean, do you, that for example on the day the contract was signed, before Inslaw did anything under this contract, that the Department of Justice advanced any payment?

A I don't recall when the first check, or the amount of it, when it was presented to Inslaw, and when I checked off on it.

Q I ask you, sir, if it is a fact that as it's used in this contract, this whole business of advanced payments, that all that means is that the contractor performs particular services, certifies in writing that those particular services have been performed, and then, acting on that, you as the contracting officer had authority which you wouldn't otherwise have had, to actually release funds to them for that work that they had done, but to do it immediately or very promptly; isn't that true?

A I don't understand your question, and I think it's not true.

Q Well, let me try to make my question clearer.

MR. COOPER: Why don't you just ask him --

THE WITNESS: Why don't you split it up into parts?

MR. COOPER: Ask him how it works.

BY MR. KELLOGG: (Resuming)

Q You tell me how, in your understanding, how this advance payment arrangement under this contract actually worked?

A How it worked?

Q Yes. What did the contractor Inslaw have to do to get any advance payments?

A Physically, Inslaw would prepare a check, and I forget now to who it was made out to, it must have been to Inslaw, had an Inslaw official sign it -- and this is the best of my recollection -- sign it, and then come to me for a counter-signature, and then went for a third signature, an got the money.

Q All right, but was there any document that had to be provided to you as a basis for asking you to sign a check?

A The contractor kept track of the advance payments on his cost reimbursement vouchers, if I recollect correctly.

Initially, before I would authorize the advance payment, I would get confirmation from the audit staff, either telephonic or in writing, before we released that payment.

Q And you wanted to get confirmation of what, sir?

A Confirmation to see whether the amounts of the check bear a relationship to the cash flow needs of the contractor.

Q And is it your testimony, sir, that the amounts of the requested advance payments had not relationship to any work that had actually been done at that point in time?

A The cost reimbursement vouchers, when substantiated by cost categories, what costs had been incurred.

Q Well, that's my question. So when they presented you with a request for a quote advance payment --

A It was usually supported by information on a voucher.

Q And the voucher at least said in writing, Inslaw was saying in writing that it had incurred these costs; isn't that right?

A Right.

Q Already incurred them; not that they were going to?

A Incurred, or under a cost reimbursement contract, one can voucher for incurred cost and costs booked, so not in all cases were the costs incurred.

Q But it might be incurred in an accounting sense, if they do it on an accrual --

A I'm not an accountant.

Q Well, neither am I. But one way or another, before they got any money, they had to certify to you in writing that these costs had either been actually incurred, or had been booked; isn't that right?

A I think it's right. Particularly under the prompt payment act, which was enacted arounid that timeframe, the payment, the reimbursement of cost, took 30 days.

Q Yes, and this speeded that process up by 30 days, 20 days, or whatever?

A Correct. Generally, that's the way I recollect.

Q But it did not represent actually paying the contractor in advance of the contractor either incurring the cost or booking the cost; isn't that right?

A I don't recall specifically. I would have to see vouchers and compare the checks, the amounts of the checks with the vouchers.

Q Well, I ask you sir if it isn't a fact that this whole business of the advanced payments, that all that meant is that the contract, Inslaw, got paid exactly what they would have gotten paid without the advance payment arrangement. It's just that they got paid 30 days or less earlier.

A I would have to compare the cash flow to give you an answer on that, and I'd probably need the assistance of an auditor.

MR. COOPER: Ask him what happened, not what would be fair.

THE WITNESS: I'm getting a little confused. Apparently, your line of questioning is not proper. Okay, should I continue to answer?

MR. COOPER: No, no, no. Do you know if A through D on these notes were topics of discussion that occurred in a meeting at which certain people were present? Do you know?

THE WITNESS: I don't recall. These could have been phone conversations. This could be a consolidated note of several events. It could be anything.

BY MR. KELLOGG: (Resuming)

Q Let me go back to your point, so that you understand the procedural rules.

Mr. Cooper is entitled to make on the record whatever objections he wants to make. Under the rules, you have to answer notwithstanding the objection unless Mr. Cooper orders you not to answer.

A Okay. So my answer is, I don't know whether -- it looks like a neat note. My notes are not normally

Q But conceptually, as you understand it, I am correct, am I not, that under this advanced payment arrangement INSLAW properly could not make a claim to get payments until they could certify either that they had actually incurred costs that would be reimbursible under the contract or that they had booked such reimbursible costs under the contract?

MR. COOPER: Objection. The question has been asked and answered at least twice.

BY MR. KELLOGG: (Resuming)

Q That's correct, isn't it?

A The amount of advanced payments, advanced payment schedule was linked to the cash flow requirement of the contract.

Q Well, let me ask you this. It surely is the case, isn't it, that INSLAW couldn't just come to you under this contract and say, look, we need $500,000. We haven't done any work at all. We haven't booked any costs. We haven't incurred any costs.

Now, if that was the case, they wouldn't get a dime from you under an advanced payment, isn't that right?

A If the advanced payment schedule set forth in the contract had the level of advanced payments high enough, they probably could have gotten it. That was negotiated. That particular provision, the schedule of payments and as it links to INSLAW's cash flow requirements, was negotiated by Bob Whiteley.

Q Are you aware that Mr. Whiteley testified last week that these advanced payments under this contract were really just prompt government payments for work that had already been performed?

A He may have testified to that.

Q If he did, you wouldn't have any reason to dispute that testimony, would you?

MR. COOPER: Objection.

THE WITNESS: He's smarter than I am in that area.

BY MR. KELLOGG: (Resuming)

Q In any event, there came a time -- strike that.

When this issue arose about the new bank, borrowing from the Bank of Bethesda by INSLAW, do you recall when you learned of this whether you were alone or with anybody else, not including the person who was giving you the information?

A I think I was in a conference room at EOUSA when Murry Hannon walked in with a piece of paper.

Q But you indicated that you thought you must have learned of the fact of the bank borrowing before that, which is what prompted Mr. Hannon to bring that in?

A I con't recall what, when or how or what precipitated Hannon's appearance.

Q Well, in any event, when you recall the event when Mr. Hannon came into the EOUSA conference room with this document in response to somebody's inquiry about it, who else was present besides yourself and Mr. Hannon?

A I think Brewer may have been there and/or Mike Snyder.

Q Do you recall Mr. Brewer making any statements or taking any position as to what, if anything, should be done as a result of this?

A No, I don't.

Q Would you deny that he took the position that you should send -- strike that.

Do you recall either Mr. Brewer or Mr. Rugh or anyone there in the Executive Office taking the position giving you the information?

A I think I was in a conference room at EOUSA when Murry Hannon walked in with a piece of paper.

Q But you indicated that you thought you must have learned of the fact of the bank borrowing before that, which is what prompted Mr. Hannon to bring that in?

A I don't recall what, when or how or what precipitated Hannon's appearance.

Q Well, in any event, when you recall the event when Mr. Hannon came into the EOUSA conference room with this document in response to somebody's inquiry about it, who else was present besides yourself and Mr. Hannon?

A I think Brewer may have been there and/or Mike Snyder.

Q Do you recall Mr. Brewer making any statements or taking any position as to what, if anything, should be done as a result of this?

A No, I don't.

Q Would you deny that he took the position that you should send -- strike that.

Do you recall either Mr. Brewer or Mr. Rugh or anyone there in the Executive Office taking the position that because of this advanced payment that you had just learned of -- I'm sorry, I misspoke.

Because of the new bank borrowing that you had just learned of that you should ask INSLAW to turn over its source codes to its software?

A I don't specifically recall that, but I recall several events occurring at the same time, generally speaking.

Q What were those events?

A The notification that INSLAW had violated the advanced payments provision of the contract.

At the same time, generally around the same time, either as a result of at the evaluation of INSLAW's statement as to what the impact of advanced payments discontinuation might be, the audit staff informed us either in writing or telephonically that INSLAW may be in financial difficulties, and I think in that relationship the EOUSA became concerned about work in process which was in EOUSA hands.

Q All right, so that to your recollection it was as a consequence of these events that you've testified about, it was EOUSA that expressed a concern about getting ahold of the INSLAW software source code?

A I think that that request originated with the EOUSA.

Q As a matter of fact, it originated with Mr. Rugh at EOUSA, isn't that right?

A I don't know.

Q Would it be fair to say that he certainly wasn't opposed to that?

A Oh, sure. He was probably advised by his subordinates. I mean, the sequence of who became concerned first I cannot speculate on.

Q Do you ever recall Mr. Brewer expressing to you or in your presence a concern about the need to get ahold of the INSLAW software source code in this context?

A I don't specifically recall, but I'm sure that I did express concern, as I'm sure others did.

Q As a result of that, what is your recollection? What request was made first, the request or the notice that you were going to shut off the advanced payments or the request to turn over the source code materials, which of those?

A I don't know. I can't recall the sequence of events, but I can recall they are all related.

Q You indicated that the initial concern that you had when you learned about the additional INSLAW bank borrowing was that you felt that that was a violation of the specific covenant in the contract regarding the advanced payments; is that correct?

A Yes.

Q What, in your understanding, was the reason why bank borrowing would be something that would be a matter of concern with respect to the advanced payments system or procedure?

A I don't understand the question. The contractor violated a provision of the contract, and I gave him a notification that he violated it.

Q My question doesn't go to whether or not it's a violation of the contract. I'm just asking, as the contract officer, what did you understand the reason for not permitting additional bank borrowing without notification to the government? What did you understand the reason for that was?

A Why they didn't notify us?

Q No. Why did you understand, what was the reason that the government needed to be notified? In other words, why was this put in the contract, in your understanding, if you know?

A The smarter minds than me wrote the procurement regulations and proscribed the language to be used.

Q So as far as you know, that's in all contracts?

A That is fairly standard language.

Q Well, I ask you, sir, if the fact of the matter isn't that the reason for that is the presumption that additional borrowing would generate a greater financial risk to the company and a greater risk that the company would go under?

A That could be a concern, yes.

Q But I guess, if Mr. Whiteley is correct that these advanced payments in the context of this case really does mean payment for work already done but prompt payment, whereas if it was included in his payment arrangement it would be payment in 30 days or 60 days or whatever the norm would be, I guess it's fair to say that additional borrowing wouldn't increase any risk regarding the advanced payments if the payments were for work that had already been done anyway; is that right?

MR. COOPER: Object to your question because of lack of foundation. You haven't established what anyone has said. Your question is extremely speculative. You've asked a question of the witness, and the witness said this was a legal requirement, and that's why it was put in the contract.

I just think it's a grossly unfair question which really borders on legal argument. I just object strenuously to the way in which you phrased that question.

BY MR. KELLOGG: (Resuming)

Q Can you answer the question?

A I forgot it. Please repeat it.

Q I think I'll save it.

MR. KELLOGG: Mark that as 13.

(The document referred to
was marked Videnieks Exhibit
No. 13 for identification.)

BY MR. KELLOGG: (Resuming)

Q Mr. Videnieks, Exhibit 13, is that a copy, excluding the handwritten highlighting that's put on there, but apart from that, is that a copy of a letter that you sent to Mr. Gizzarelli at INSLAW by date of December 6, 1982?

A Yes.

Q In that letter, you are asking essentially for copies of all of the source code materials for the software used under the contract?

A Yes, there are seven items itemized on here.

Q But that includes what is colloquially referred to as the source code for the software?

A I don't see source code referred to in here unless I'm not seeing it.

Q I don't think the term is in there, but isn't that what people refer to as source code?

A I don't know whether these seven items are source code.

Q The computer programs themselves, the underlying algorithms and all of that business?

A I'm requesting computer programs and documentation.

Q Now, do you recall getting any response to that in December 1982?

A I specifically don't recall a response. It does not mean I may not have received it.

MR. KELLOGG: Mark this as 14.

(The document referred to was marked Videnieks Exhibit No. 14 for identification.)

BY MR. KELLOGG: (Resuming)

Q Now, I show you what's been marked as Exhibit 14, a letter dated January of '83 which appears to enclose additional copy, if you will, of the Exhibit 13 letter of yours to Mr. Gizzarelli which apparently got lost in the mail somewhere.

Does that refresh your memory?

A Yes.

Q You recall it?

A I recall this letter, yes.

Q Now, sir, go back to Exhibit 13 a minute. Now, you testified that the audit staff had indicated that because of the bank borrowing, the additional bank borrowing and that because of the possibility of shutting off the advanced payments that the audit staff was concerned that this would adversely impact INSLAW's financial condition. Is that correct?

A I guess I testified that we were advised as a result of events precipitated by INSLAW's violation of the advanced payments provision of the contract that the audit staff became involved and notified both the contracting officer and the program office that INSLAW was in precarious financial condition and thus everybody concerned took steps to insure that our interests are protected.

Q So I understand what you're saying here, INSLAW makes an additional bank borrowing which you don't find out about until several months later, as I understand it. You find out about it in the fall of '83, and the bank borrowing was made, say, six months before. I'm sorry, I misspoke.

You find out about it in the fall of '82, and the bank borrowing, the extra bank borrowing, had been made in the spring of '82 shortly after the commencement of the contract. Is that right?

A I think that's right.

Q When you learned about that, in your view that's a violation of the advanced payments provision of the contract; correct?

A Yes.

Q Because the contractor is not supposed to make any additional bank borrowings without advising you and notifying you of it at the time. Isn't that right?

A Yes.

Q All right. Now, when you found out about it, the borrowing had already been made six months before; correct?

A The line of credit had been established at $1.2 million. I don't know how much money actually had been borrowed.

Q All right, but I guess my question is this. Was the audit staff's concern that INSLAW's financial condition already was bad because they had borrowed or, on the other hand, was it that their financial condition would be bad if you withdrew the advanced payments?

A I think the audit staff concluded that INSLAW's financial condition is bad.

Q Well, after the contract went forward beginning in March of '82, how frequently would you or anybody from Justice get any financial statements of INSLAW?

A Mostly unless they were late. Their requirements were monthly financial management statements, but the contractor sometimes was late, and later on the contractor completely discontinued.

Q During this first six months of the contract, did you get the monthly financial statements or not?

A Let's see the file so I can examine the file.

Q Well, I'm asking you for your recollection.

A I don't recall whether I did or did not receive them without examining the file to refresh my memory.

Q If you didn't receive them, do you recall --

A I would have issued a letter to them that I had not received them.

Q Do you recall issuing any such letter?

A I recall issuing one such letter.

Q During the first six month of the contract?

A I don't recall that.

Q Was there anything in the financial reports that you did receive during the first six months that reflected anything about the bad financial condition of INSLAW?

A The format of those financial management reports was not in the form of a financial statement of the company. The financial report is geared towards the performance of that specific contract. It was a contract specific financial report.

Q So this is not a financial statement of the company?

A No.

Q Were there any requirements under the contract that INSLAW submit financial reports of the company itself periodically?

A No. I'm positive, no. As a part of the proposal, they submitted a financial statement, and also they submitted a cash flow requirement statement to substantiate their claim for the advanced payments included in the advanced payments provision of the contract.

Q In any event, in the fall of '82 when you say the audit staff indicated that they thought that the INSLAW financial condition was bad, who in the audit staff advised you of that?

A I think it was -- it was Bob Whiteley.

Q What, if anything, did he recommend that you do about that?

A I don't specifically recall, but I do recall that it was, I believe it was a written -- it was a memorandum, and --

Q So this is not a financial statement of the company?

A No.

Q Were there any requirements under the contract that INSLAW submit financial reports of the company itself periodically?

A No. I'm positive, no. As a part of the proposal, they submitted a financial statement, and also they submitted a cash flow requirement statement to substantiate their claim for the advanced payments included in the advanced payments provision of the contract.

Q In any event, in the fall of '82 when you say the audit staff indicated that they thought that the INSLAW financial condition was bad, who in the audit staff advised you of that?

A I think it was -- it was Bob Whiteley.

Q What, if anything, did he recommend that you do about that?

A I don't specifically recall, but I do recall that it was, I believe it was a written -- it was a memorandum, and --

Q Do you recall whether he recommended that the advanced payments be terminated?

A No, he did not recommend that.

Q Do you recall whether he recommended that the government should take steps to get the source code and the software?

A No, that was not a Bob Whiteley recommendation. The recommendation to safeguard the government's interest in this contract was made in part upon Murray Hannon's statement that if advanced payments were discontinued that he would not be able to meet his December payroll.

So that, to us, indicated that, further indicated that there must be some problems there and that we should take action to protect our interests.

Q So it was Mr. Hannon who indicated that if you shut off the advanced payments they could not make the payroll?

A And I would say that Mr. Whiteley corroborated that or also independently informed me.

Q That if the advanced payments were shut off the company would have a heck of a time continuing to operate, in effect?

A Yes. But that indicated a generally precarious financial condition.

Q But presumably when INSLAW went into this contract it was precarious enough that they had to ask for advanced payments. Isn't that right?

A No, I would not have been able to sign a contract without making a determination of responsibility, a written determination as the contracting officer. It basically states that the contractor is technically and financially capable to perform the work.

At that time, INSLAW had been performing on these pilot contracts. In any event, the government, meaning me, with the assistance of the audit staff made the determination that INSLAW can perform the contract.

Q I recognize you already had to make a determination that they could perform or you wouldn't have executed the contract; but on the other hand, INSLAW had to demonstrate to you up front going in that they needed advanced payments or you wouldn't have given it to them; is that right?

A And that they would not borrow additional money so I could get it approved by the Assistant Attorney General without misstating facts.

Q Now, going back to the letter, your letter of December 6th, I believe it's Exhibit 13, did you prepare that letter yourself, sir?

A I think that I did not formulate the center of it, for sure. I did not write the language of the seven points for sure. I may have written the beginning and the end.

Q So that the substance of the letter --

A The technical description of the software and documentation which we were requesting was put together by the technical experts.

Q That came from the Executive Office of the U.S. Attorneys, didn't it?

A Correct.

Q Do you know whether Mr. Brewer had any input in the drafting of that letter, the draft that came to you?

A He may have, but I would guess that it was primarily Jack Rugh and Mike Snyder. Brewer may have participated, but normally on this type of letter it would be Rugh and/or Snyder.

Q But normally it would have been reviewed by Mr. Brewer before it was sent over to you, wouldn't it?

MR. COOPER: Objection. Lack of foundation. You haven't established that this witness would know what documents Mr. Brewer reviewed and which ones he didn't since he didn't work in Mr. Brewer's office.

BY MR. KELLOGG: (Resuming)

Q You can answer.

A I cannot say in which office I was when this letter was put together or in which office I signed it, and I cannot speculate as to whether Brewer did or did not review it.

Q Do you recall any discussions with Mr. Brewer about the language in this document?

A We must have at one point or another. He became involved because of this letter. In other words, this letter was undated. Apparently it was dated but lost, and then Brewer had to send this transmittal over again, and obviously he was familiar with this.

Q Yes.

In any event, at some point do you recall getting any response to this December 6th letter which eventually got to INSLAW sometime in early January?

A I recall getting a response, but I would like to see it to refresh my memory as to what it said.

Q Do you recall who you got the response from?

A No.

(Whereupon, at 5:22 p.m., the taking of the instant deposition ceased.)

Signature of the Witness

SUBSCRIBED AND SWORN TO before me this _______ day

of ________________, 19_______.

NOTARY PUBLIC

My commission expires: ________________.

CERTIFICATE OF REPORTER

SUSAN A. HARRIS, the officer before whom the oregoing deposition was taken, do hereby certify that the witness hose testimony appears in the foregoing deposition was duly sworn y ME; that the testimony of said witness was aken by me to the best of my ability and thereafter reduced to typewriting nder my direction; that said deposition is a true record of the testimony iven by said witness; that I am neither counsel for, related to, nor mployed by any of the parties to the action in which this deposition as taken, and further that I am not a relative or employee of any ttorney or counsel employed by the parties thereto, nor financially r otherwise interested in the outcome of the action.

Susan A Harris
NOTARY PUBLIC

My Commission expires: 3-14-91

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

UNITED STATES BANKRUPTCY COURT

DISTRICT OF COLUMBIA

- - - - - - - - - - - - - - - - - x

INSLAW, INC., :

Debtor, : Case No. 85-00070

INSLAW, INC., :

Plaintiff, : Adv. Proc. No. 86-0069

v. :

UNITED STATES OF AMERICA, :

and UNITED STATES DEPARTMENT :

OF JUSTICE, :

Defendants. :

- - - - - - - - - - - - - - - - - x

DEPOSITION OF PETER VIDENIEKS(cont'd)

Washington, D. C.

June 18, 1987

AR

ALDERSON REPORTING

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

- x

In Re: INSLAW, INC., :
Debtor, :
and : 850070
INSLAW, INC., : ADVERSARY PROCEEDING
: No. 86-0069
Plaintiff, :
-vs- :
UNITED STATES OF AMERICA and :
the DEPARTMENT OF JUSTICE :
Defendants. :

- x

Thursday, June 18, 1987

Washington, D.C.

Continued deposition of

PETER VIDENIEKS,

a witness in the above-entitled cause, was called for examination by counsel for the Debtor/Plaintiff, pursuant to notice, at the offices of McDermott, Will & Emery, before Craig L. Knowles, CSR, a Notary Public in and for the District of Columbia, commencing at 10:08 a.m., when were present on behalf of the respective parties:

APPEARANCES:

Kellogg, Williams & Lyons, by
PHILIP L. KELLOGG, ESQ.
JAMES L. LYONS, ESQ.
1275 K Street, Northwest
Washington, D.C. 20005
On behalf of the Debtor/Plaintiff.

United States Department of Justice, by
SANDRA P. SPOONER, ESQ.
Deputy Director
Commercial Litigation Branch
550 11th Street, Northwest
Room 1230
Washington, D.C. 20530
On behalf of the Defendants.

Also Present:

Mr. Hamilton.

* * *

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PROCEEDINGS

Whereupon,

PETER VIDENIEKS,

was called for examination by counsel for Debtor/Plaintiff, and having been first duly sworn by the notary public, was examined and testified upon his oath as follows:

EXAMINATION BY COUNSEL FOR DEBTOR/PLAINTIFF

BY MR. KELLOGG:

Q. Mr. Videnieks, this is a continuation of your deposition that we commenced yesterday and you are still under oath, sir.

When we finished yesterday, we were chronologically up to January 6 of 1983, when, as indicated on Exhibit 14, Mr. Brewer sent a copy of your December 6, 1982 letter to Mr. Gizzarelli, or to INSLAW, requesting the software documentation and so forth under article 30 of the contract.

You recall that testimony?

A. I recall that, yes.

MR. KELLOGG: I guess the next thing I want 20 do to do is mark this as 15.

(Deposition Exhibit 15 was marked for

identification.).

BY MR. KELLOGG:

Q. Mr. Videnieks, take a look at what is marked as 15, please. This appears to be a copy of a letter addressed to you, dated February 2, '83, from James Dimm, the acting project director at INSLAW, responding to your December 6, '82, request for the software documentation; is that correct?

A. Yes, sir.

Q. To your recollection was that the first written response you got to that request?

A. I don't recall any other requests at this point, this very moment. It may have been.

Q. You don't remember any other responses?

A. I remember an exchange of correspondence regarding this question. Whether this is the first correspondence from INSLAW, I can't remember.

Q. Do you recall getting any oral response prior to this time?

A. There may have been discussions. There may have been discussions, I don't recall anything specific.

MR. KELLOGG: Mark this next one as Exhibit 16, please.

(Deposition Exhibit 16 was marked for identification.)

BY MR. KELLOGG:

Q. Mr. Videnieks, take a look at what is marked as Exhibit 16.

(Witness examines document.)

A. I will read it.

BY MR. KELLOGG:

Q. Just read it to yourself.

(Pause.)

A. I have read it.

BY MR. KELLOGG:

Q. This obviously is an internal INSLAW memorandum to the files.

I assume you have never seen this before, have you, sir?

A. No, sir.

Q. The subject of the memorandum is a meeting at the Justice Department, which the memo indicates you attended, together with others, on February 4, 1983.

Do you recall attending the meeting that is described in the memorandum?

A. I recall another one better. I don't think this is the same meeting, unless all the participants are not listed here. I don't see a name from Arthur Young here, which may have been omitted.

MR. KELLOGG: Off the record a second.

(Off-the-record discussion.)

BY MR. KELLOGG:

Q. You have indicated that you have a recollection of a meeting that was attended by the people listed here, but also by someone from Arthur Young, who is not listed in the memo, is that it?

A. It may have been a separate meeting. I recall -- I don't recall this specific meeting. At this time, I don't recall it.

Q. But you don't have any reason to dispute, as you sit here today, that you did attend such a meeting as this, do you?

A. I have no reason to dispute it, no.

Q. In general terms, the memo indicates that basically there were three issues that were addressed at this meeting.

One was the issue of advance payments. Second, the issue of bank borrowing. And the third, the question of data rights and your request to get the software that I have described earlier in your December 6 letter.

A. Wasn't there a fourth point there, too?

Q. Perhaps there was. That's all I --

A. Last point.

Q. You mean their assertion that you showed hostility?

A. Yes, I think it was a point.

Q. It's a point of the memo, but obviously, that is their characterization of it and I am not trying to get into that at this point.

I was simply trying to summarize what the memo indicated the points were that were discussed at the meeting.

A. I understand.

Q. And in general terms, those were the three broad issues that appear to have been discussed at the meeting, according to the memo; isn't that right?

A. Yes, sir.

Q. Do you have a recollection after you sent out your December 6, 1982, letter requesting the source code and the underlying data processing materials, do you have a recollection of attending a meeting like this with these various people who are identified here being present at which these questions were discussed?

A. It appears I attended a meeting like this. I don't dispute the fact that I may have attended that meeting. I don't recall it specifically, as I stated before.

Q. I understand you didn't recall, you don't recall this particular date. But my question to you is, do you have any recollection of ever attending a meeting like this at which these issues were discussed involving these people, whether it was on this date or some other date?

A. Like I stated before, another meeting jumps in my memory much more clearly than this one, which as I said before, I don't remember specifically. I am not denying it took place.

Q. All right. When you say another meeting, are you pretty clear in your mind that it was on some other time besides February 4 of '83?

A. I cannot remember that far back as to specific dates.

Q. Tell me what you remember about the meeting that you testified that you do recall more clearly.

A. That meeting was in the Andretta room in the Department of Justice. It was chaired by Bill Snider, the administrative counsel, and also one of the attendees was from the firm Arthur Young. I don't see those individuals listed here.

That meeting, I think, was rather tense. Bill Hamilton was there, and that stands out in my memory. This one does not.

Q. At least Mr. Hamilton's recollection of that meeting, the Andretta room meeting was that it took place some time in May of '83. And I believe his recollection is that that dealt primarily with the computer center cost issue.

A. That is not my recollection. I cannot -- I don't think I have any notes with dates on it, but I seem to remember taking a vacation in the month of February, or early spring, going down to South Carolina, after the meeting I am referring to.

Q. All right. Well, tell me what your

recollection was of that meeting. The one you are talking about took place in the Andretta room in the department, it was chaired by Bill Snider?

A. Bill Snider, Kamal Rahal was there, I was there, Hamilton, the man from Arthur Young, Harvey may have been there.

Q. Mr. Sherzer?

A. Right, that is about all I remember with respect to the attendees. The discussions I think centered around -- could have been the same issue as presented in the memo that you have here as Exhibit 16.

Q. Your recollection, such as it is, is that this meeting would have been somewhere in early spring, earlier than May?

A. That is my recollection, because I remember coming back from that vacation, there was a huge snow storm that hit Washington and I had to shovel the parking spot for my car.

Q. In any event, would it be fair to say that these three questions that I described, that is, the advance payment issue, the bank borrowing, INSLAW bank borrowing, and the software, your request to get the software data, those three issues were all inter-related, is that a fair statement?

A. A fair statement would be that INSLAW's financial condition, bad financial condition as assessed and communicated to me by the audit staff and the data request, are related.

And it was made to protect the government's interests in the event INSLAW's financial condition worsened.

Q. I am not sure that is any different from what I asked, but to be precise, I understood you to testify yesterday that when you first learned in the fall of '82 that INSLAW had made a new line of credit without notifying you under the contract, as they were required to do, that you felt that that was a violation of the advance payment clause?

A. Yes, sir.

Q. Isn't that right?

A. Yes, sir.

Q. And that you at least considered at that point giving a notice to INSLAW that they were in violation of the contract and that there is a possibility that you might withhold or stop making the advance payments?

A. I gave them a letter of that nature.

Q. All right. So that certainly, the bank borrowing or the new line of credit and the advance payments issue, those two were certainly related to each other, weren't they?

A. The advance payments article in the contract prohibits unauthorized new liabilities to be incurred by the contractor.

What you are saying basically is, you are bringing out a subpoint from the provision in the contract.

Q. I am just asking you, aren't there two, aren't the two related.

A. I answered you.

Q. And they are.

A. I answered you.

Q. The answer is they are related.

MS. SPOONER: The question has been asked and answered.

MR. KELLOGG: I disagree with you. I am going to ask it again, because I don't think it was answered. I think it's a very simple thing.

I don't think it involves any concession on your part, either.

BY MR. KELLOGG:

Q. The contract mandates that the contractor, INSLAW, advise you of any new bank borrowings or any change in their credit situation; isn't that right?

A. Obtain my approval.

Q. Notify you and obtain your approval. And when you found out that they had gotten a new line of credit without notifying you and getting your approval, that in turn was a violation of the advance payments clause; isn't that right, or it entitled you, if you wanted to --

A. It was a violation of one of the covenants within that article.

Q. And as a consequence of such a violation, you had the right to stop the advance payments; isn't that right?

A. Right, and I did not do that.

Q. I understand that.

A. No.

Q. But you wrote them a letter saying you were considering doing that?

A. Yes, sir.

Q. So that the two issues, that is, the fact of the new bank borrowing, triggered that letter about the possibility of eliminating the advance payments; isn't that right?

A. Right.

Q. All right so the two are related.

A. Because in order for me to put this unusual provision in a cost reimbursement contract, I had to get the approval from the assistant attorney general for administration to include that language in the contract.

Q. Yes, I understand.

A. In order to get that approval I had to make certain statements and sign my name as to the fact that the contractor has no other source of money, that he is unable to borrow money.

Q. I understand.

A. Which appears was not the case.

Q. I understand. Now, the request for the software source codes and so on that was contained in your December 6, '82, letter, that request was also triggered because of a concern over what people in the executive office and yourself thought was a deteriorating financial condition of INSLAW at the time; isn't that right?

A. The memorandum from the audit staff, prepared by Bob Whiteley, I think, basically stated to my best recollection that INSLAW's condition is bad, aside from the advance payments issue. That they are in a bad financial condition.

Q. But the fact that they had gone out and gotten an additional credit line and maybe borrowed on it since the contract started --

A. That may have triggered my contacting Whiteley or it may have triggered the auditors looking into INSLAW. However, it's their task to do that, anyway, on a continuous basis as a cognizant audit activity.

So I am not sure as to what triggered Whiteley's taking a closer look at INSLAW. It could have been my request.

Q. In any event, you did call that to Whiteley's attention and ask him --

A. I may have, I specifically don't remember it, but I don't deny that I may have.

Q. At this February 4, 1983 meeting, it's Mr.

Hamilton's best recollection, of course, he could be wrong on the date, but his best recollection is that at that meeting during the discussion of the data rights question, that Mr. Hamilton said to Mr. Snider, look --

A. Bill or Mike?

Q. Bill Snider. Mr. Hamilton's recollection is that he said to Mr. Bill Snider, look, we just want to be able to protect our proprietary rights. We will give the government the rights to our privately funded even answerments, just as long as you can give us a modification to the contract or an agreement that protects our right to be able to own it and sell it freely to others.

And that Mr. Snider responded to that by saying, Bill, that's not the way the government does business. If we want your privately funded enhancements, we will pay you for it.

My question to you is, do you have any recollection of such a conversation in your presence, either at this February 4, 1983, meeting, or any other?

A. Between Snider and Hamilton?

Q. Yes, sir.

A. I don't have a specific recollection. I don't deny it took place.

Q. It may have taken place?

A. It may have taken place.

Q. Do you mean by that it could have taken place in a meeting that you attended?

A. In my presence, in my presence.

Q. All right. Is that inconsistent with the positions that Mr. Snider was taking, that you do remember during that period of time on this issue?

A. I cannot right now, on the spot, analyze Bill Snider's various positions on the question at this point. I don't remember whether he changed his position at all.

Q. Do you ever remember him taking a position similar to rewhat is reflected in that statement I just set forth, namely, look, if we want your privately funded enhancements, we will pay you for them?

A. I don't know what bill Snider said, like I said, I don't remember. He may have said it in my presence, but he's not the contracting officer. He may have had a conversation at the end of the table, he may have had it right in front of me. Modification 12 controls.

Q. I understand, of course, it does and I am not disputing that. I am just asking you, I presume in the course of all of this that you at some point had some conversations with Mr. Snider, Mr. William Snider, about this data rights issue; isn't that right?

A. Yes.

Q. In those conversations, or in others that you were present when he made statements --

A. You are not talking about this specific meeting now?

Q. Yes, not this specific meeting.

A. Okay.

Q. But any others. Did Mr. Snider ever make a statement in your presence like this one that I am talking about, namely, taking a position, well, look, if we want the privately funded enhancements, we will pay for them?

MS. SPOONER: I am going to object on the ground that that is protected by the attorney-client privilege and instruct the witness not to answer.

MR. KELLOGG: All right.

BY MR. KELLOGG:

Q. Do you ever recall him making such a statement or a statement similar to that in any meeting that you attended with him, Mr. William Snider, in the presence of anybody from INSLAW?

A. I don't specifically recall that.

Q. Mr. William Snider, in his deposition testimony, has testified that a time or two that he counseled you regarding your abrasiveness in dealing with the contractor. Is that true?

MS. SPOONER: Objection. The question is confusing.

Are you asking this witness if Mr. Snider testified to that, or if Mr. Snider did in fact counsel him?

BY MR. KELLOGG:

Q. My question is, he testified to it and my question is, is it true?

MS. SPOONER: Is what true?

MR. KELLOGG: I take it back, the objection is well founded.

BY MR. KELLOGG:

Q. Is it true, Mr. Videnieks, that Mr. William Snider, at some point during these lengthy disputes with INSLAW, that Mr. Snider counseled you about your abrasive attitude towards the INSLAW people?

A. I don't recollect that. Snider was not in a line of command with respect to me. I did not report to him. That's basically it.

Q. I understand he wasn't in the chain of command above you. My question is, let me put it to you this way. You have no recollection of Mr. Snider ever telling you in words or substance that he felt that you were being a little abrasive in dealing with these issues and with the INSLAW people?

A. I -- no, I do recall, though, that Mr. Snider said basically to the effect, "Be careful with your correspondence with INSLAW and coordinate it with my office."

Q. What did you think he meant by being careful with your correspondence?

A. I imagine -- well, I would have to speculate what he meant.

Q. He was talking to you. What do you think he meant?

A. Things by that time may have gotten involved to legalistic, in the sense wherein involvement of an attorney in Snider's opinion was becoming important.

(Pause.)

MR. KELLOGG: Mark this as Exhibit 17, please.

(Deposition Exhibit 17 was marked for identification.)

BY MR. KELLOGG:

Q. Take a look at Exhibit 17, please. That appears to be a copy of a letter to you from Harvey Sherzer, dated February 10, 1983, in which he addresses some questions that came up in the February 4, 1983 meeting.

A. Yes. You notice this name on the last page, John Hozik. He is a partner from Arthur Young. That is the individual I was referring to earlier.

And his name does appear in this internal INSLAW memo talking about February 4. So it may be -- I may be remembering the same meeting.

Q. It may be that the meeting you were thinking of was on February 4, if this Arthur Young fellow was present.

A. Instead of May.

Q. Yes, I understand. In any event, I take it you received the original of this Exhibit 17, sir?

A. Yes, sir.

Q. There is all kind of correspondence going back and forth here, but let me just ask you, on April 11, 1983, I believe it is, you and INSLAW, Mr. Hamilton, executed modification number 12 to the contract which addressed this data rights issue; is that correct?

A. That's correct.

Q. And that that modification was essentially an attempt by the parties, the government and INSLAW, to try to resolve your concern for getting the software data and their concern about the data rights in the privately funded enhancements; is that correct?

A. Yes, sir.

MR. KELLOGG: I am going to skip several documents here and go to a document, a letter of yours of March 8, 1983, if you would mark that as Exhibit 18.

(Deposition Exhibit 18 was marked for identification.)

BY MR. KELLOGG:

Q. If you will take a look at that, it's a letter from you to Mr. Sherzer, or to his firm, dated March 8 of '83.

(Witness examines document.)

A. Okay, I glanced at it.

BY MR. KELLOGG:

Q. Is that a copy of an original letter that you sent to Mr. Sherzer?

A. Yes.

Q. On March 8, 1983?

A. Yes.

Q. I take it that this is a response to the earlier letter of Mr. Sherzer's that was marked as Exhibit 17, together with some additional --

A. That's not the case.

Q. No?

A. It appears to be response to a March 3 letter. This is dated February 10.

MR. KELLOGG: I take it back.

Mark this, please, as Exhibit 19.

(Deposition Exhibit 19 was marked for identificaton.)

MS. SPOONER: Are you talking about now Mr. Sherzer's letter of March 3?

MR. KELLOGG: Yes.

BY MR. KELLOGG:

Q. If you will look at 19 and tell me whether or not that is a copy of the letter from Mr. Sherzer to you, dated March 3, the original of which you received.

(Witness examines document.)

A. I have read it.

BY MR. KELLOGG:

Q. I take it that Exhibit 19 is a copy of the letter that you received, a copy of the letter that you received from Mr. Sherzer?

A. Yes, sir.

Q. What we had marked as Exhibit 18, your letter to Mr. Sherzer of March 8, 1983, that is your reply to this Exhibit 19, is that right?

A. Right.

Q. Turn to the second page of that letter, Exhibit 18, your letter, the paragraph starting "Finally, I understand that you told Mr. Snider on March 4 that government representatives were aware of the enhancements to the data bases," and you go on to indicate that the first time this was raised was at the, well, that nothing was said by INSLAW representatives to challenge the statement by government representatives that the first time this issue was raised was at the February 4 meeting.

After you wrote this letter up until today, did you ever come into any knowledge that INSLAW had raised the fact of privately funded enhancements to the PROMIS software before February 4 of '83?

A. I can't remember that far back with respect to dates.

Q. I call your attention to your testimony yesterday in which I examined you about the, I examined you yesterday about the exchange of correspondence between yourself and Mr. Merrill, in late '81 and early '82, before the contract was even negotiated, in which questions --

A. They should have been more clear then, and my mind is oriented towards contract administration, not towards events preceding contract award.

Frequently, you use long introductions that I seem to be missing at this point.

Q. I guess my point is this. After looking at what we marked yesterday as Exhibits 2 and 3, 2 being your letter to INSLAW asking for responses to the questions set forth in the attached memo, and 3 being INSLAW's responses to those questions, do you now realize that INSLAW had raised this issue before the contract began?

A. Yes. Technically, being technically correct, during the clarification process in the competitive mode prior to contract award we asked INSLAW to clarify several areas by memorandum, by letter. One of those points is the one we discussed yesterday.

Q. They did mention in that clarification that there were privately funded enhancements in the PROMIS software; isn't that right?

A. At that point that was their position.

Q. So that it would be incorrect, would it not, to say, as you said in your March 8, 1983, letter, Exhibit 18, that the first time INSLAW ever raised this matter was at the February 4, 1983, meeting?

MS. SPOONER: Objection, that is not what the letter says.

BY MR. KELLOGG:

Q. Well, technically I guess you may be right. But the letter says nothing was said by INSLAW representatives in this regard at the February 4 meeting in response to the statement by government representatives that this was the first time this issue was raised.

I guess counsel is technically correct that it's not the statement in the letter, Exhibit 18, that this was the first time it was raised.

BY MR. KELLOGG:

Q. But somebody from the government asserted at the February 4 meeting that that was the first time INSLAW had ever raised the privately funded enhancements issue; isn't that right?

A. I don't know what somebody did.

Q. Well, you said in your letter of March 8, 1983, you made a reference to the fact that someone, some government representative made a statement at the February 4 meeting that that was the first time INSLAW had raised the issue; didn't you say that?

A. Do you want me to read the sentence to you?

Q. No, I can read the sentence.

A. I don't understand your question. It's very vague, very difficult to understand.

Q. Well, I think you understand it very well.

A. No, I don't.

MS. SPOONER: Would you like to repeat it, Mr. Kellogg?

MR. KELLOGG: Yes, I will, one more time.

BY MR. KELLOGG:

Q. In your letter of March 8, 1983, Exhibit 18, you recite the fact, or you recite the assertion that nothing was said by INSLAW representatives about privately funded enhancements at the February 4, 1983, meeting in response to the statement by government representatives that this was the first time the issue was raised.

A. Under the contract.

Q. All right. Did you, you intended, then, when you wrote this letter to add that caveat, that it was the first time it had been raised under the contract?

A. I am administering the contract, the RFP is dead. We are talking about the contract.

Q. So you didn't mean to say that nobody had ever raised it at any time, just they hadn't raised it during the contract before February 4?

A. Right.

Q. Is that correct?

A. Right.

MR. KELLOGG: If you will mark that as Exhibit 20. I am skipping a few, here. It's March 18, Mr. Videnieks to Mr. Sherzer.

(Deposition Exhibit 20 was marked for identification.)

BY MR. KELLOGG:

Q. Going back one second, Mr. Videnieks, to the March 8, '83 letter, Exhibit 18, your letter to Mr. Sherzer of March 8.

A. All right.

Q. Did you draft this letter, sir?

A. I participated in drafting this letter with bill Snider. Bill Snider had a significant input in this letter.

Q. All right. Did anybody else have any significant input in drafting it?

A. Not to my recollection. That does not mean that they may not have had.

Q. Turning to Exhibit 20, this appears to be a copy of a letter from you to Mr. Sherzer, dated March 18. Excuse me. I believe it's dated March 18, 1983. It appears to have an erroneous received stamp from the law firm up at the top indicating '82.

MS. SPOONER: I don't see that on my copy. I wonder if I have the right document.

MR. KELLOGG: That one.

MS. SPOONER: I thought you had said it was a document dated March 8.

MR. KELLOGG: No, 18. I am sorry, if I said 8. I am moving now, there is a March 8, which is Exhibit 18.

BY MR. KELLOGG:

Q. Do you have Exhibit 20 there, Mr. Videnieks?

A. Yes, sir, but I don't have the letter to which it refers, unless I have misplaced it, the March 9 letter that this letter seems to be responding to.

MR. KELLOGG: All right, I will put that in, and I am sorry.

Let's mark this one as Exhibit 21.

(Deposition Exhibit 21 was marked for identification.)

MS. SPOONER: This is a letter from Mr. Sherzer dated March 9, 1983?

MR. KELLOGG: Yes, that's correct.

MS. SPOONER: Thank you.

BY MR. KELLOGG:

Q. If you will look at 21, that appears to be a copy of a letter dated March 9, 1983, from Mr. Sherzer to you and which, I believe, Exhibit 20 was your response.

A. That appears to be the case.

Q. All right.

A. I read the summary.

Q. All right. Turn, if you will, to Exhibit 20, which is your response, dated March 18, 1983.

(Witness examines document.)

A. All right.

BY MR. KELLOGG:

Q. I take it Exhibit 20 is a copy of your response to Mr. Sherzer's March 9, 1983, letter?

A. Yes, sir.

Q. Your letter, Exhibit 20, was dated March 18, 1983?

A. Right.

Q. Mr. Videnieks, you indicate in the first paragraph of this letter that the purpose of the letter is to correct certain statements that Mr. Sherzer had made in his March 9 letter and to offer an alternative to the escrow agreement currently under consideration; is that correct?

A. That's what the introduction seems to say, yes.

Q. Prior to this time, am I correct to believe that there had been under consideration the possibility of working out an escrow agreement between the government and INSLAW which essentially would have provided that an original set of the data, the software data, would be placed in escrow with a bank so that if anything happened to INSLAW, it went bankrupt or went out of business or whatever, the government would be able to get at the software and protect itself in sum and substance; such a thing was under consideration prior to this letter, wasn't it?

A. I think generally you are correct. In order to completely agree with you I would have to scan that agreement.

Q. I am not trying to --

A. I can't recall now exactly what was in that escrow agreement. I did not participate in the drafting of it.

Q. All right. I am not trying to recite in detail what the agreement provided.

A. No.

Q. But essentially it was some kind of an escrow agreement involving the software data and source codes and so forth, correct?

A. I think so.

Q. All right. And this letter here, Exhibit 20, you, among other things, are offering an alternative. Instead of the escrow agreement, another alternative to try to resolve the issue; is that correct?

A. Right. It was my position as contracting officer not to have extraneous documents floating around. I wanted all matters to be included, all points -- I wanted the contract, itself, to cover all issues under it and have no extraneous documents floating around.

Q. In your letter you talk about an seek to correct from your perspective various things that Mr. Sherzer has said in his letter of March 9. And --

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. Who drafted this March 18, 1983, letter that is Exhibit 20?

A. I believe it was Bill Snider.

Q. In its entirety?

A. I think so.

Q. All right.

A. I don't specifically recall, but it appears, I mean, to the best of my knowledge, yes.

Q. In any event, you don't have any recollection of having any substantial input into the drafting of this letter?

A. Let me look at it again.

(Pause.)

A. I think Bill Snider drafted this.

BY MR. KELLOGG:

Q. Before you sent that out, do you recall having any discussions about the letter?

A. I don't specifically recall any discussions. That does not mean they were not any.

Q. Are you talking about with Mr. Snider?

A. With Mr. Snider.

Q. Before this letter was drafted do you recall any discussions that you participated in with Mr. Brewer and Mr. Rugh about making this offer that is contained in this letter?

A. Yes, I do recall such discussions. In general, I think we all participated to some extent in the drafting of language which eventually ended up as being modification number 12.

I did not participate in drafting the escrow, proposed escrow agreement. There was all -- those individuals who you enumerated did communicate about the subject.

Q. In your presence?

A. Either on the telephone or in person.

Q. All right. What, if any, discussions do you remember having with Mr. Brewer about whether it would be appropriate to make the offer that is contained in your March 18 letter, Exhibit 20?

A. Which specific paragraph are you referring to as the offer? I would like to look at it.

Q. Sure. It's the part beginning, it would be the next to the last paragraph on page 2 that starts with the words "In lieu of the proposed escrow agreement which the department currently has under review, the government offers..."

A. Let me read it.

Q. That language to the end of the letter.

(Witness examines document.)

A. Okay, I read it.

BY MR. KELLOGG:

Q. Do you recall any conversations that you had with Mr. Brewer about whether to make this offer that is reflected in that part of your March 18 letter?

A. About whether to make that offer?

Q. Yes, about whether to make that offer.

A. I don't specifically recall talking to this -- to any individual specifically. I think during that time there was a continuous discussion on the phone or in person as a group or individually.

One, I don't recall a specific conversation with Brewer on that subject. And that's basically it.

Q. Do you recall a specific conversation on that same subject with Mr. Rugh?

A. I recall discussing the language which -- see, my attention is focused on the -- what ended up as being modification number 12. These preliminary documents don't stand out in my memory that well.

Q. All right, your answer, then, is you don't recall discussing this offer with Mr. Rugh?

A. Not that specific offer. I recall discussing the whole issue of data requirements and INSLAW's claim to data rights.

Q. Tell me what you do recall about your discussions with Mr. Rugh about the data rights issue.

A. As distinguished from data requirements.

Q. Yes.

A. Nothing specific. In general, I think the discussion could have dealt with INSLAW's claim with respect to proprietary rights and then requesting -- maybe that came later, requesting INSLAW to substantiate that claim.

Q. This would be after the execution of mod 12, submitting identification of the claimed privately funded enhancements and a method for showing that to you?

A. Right.

Q. And so on?

A. Yes, basically what I remember discussing with Rugh would be methodology --

Q. In all likelihood that would have come after --

A. Yes, basically that would have come after this.

Q. Do you recall any discussions with Mr. Brewer about this discussion of data rights and how to resolve it and what could be done about it and so on?

A. In general, I remember individual and group discussions with all concerned individuals about that topic, yes.

Q. What, if anything, do you remember Mr. Brewer saying on this subject?

A. Nothing specific.

Q. Do you have any recollection, just generally, of what the thrust was of the discussions?

Was there any consensus as to how to deal with the question in those discussions?

A. I think probably, as my notes indicate, discussions dealt with requesting INSLAW to provide proof of their claim that there are indeed proprietary enhancements, what form that proof should take.

Related to that were discussions about INSLAW's bad financial condition, in general, apart from the advance payments issue, all related things.

Q. Do you recall Mr. Brewer ever taking the position that INSLAW should be able to document or should be asked to document these claims that they make of privately funded enhancements?

A. Yes, and I think INSLAW offered to do that, if I remember correctly.

discussions with all concerned individuals about that topic, yes.

Q. What, if anything, do you remember Mr. Brewer saying on this subject?

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Was there any consensus as to how to deal with the question in those discussions?

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Related to that were discussions about INSLAW's bad financial condition, in general, apart from the advance payments issue, all related things.

Q. Do you recall Mr. Brewer ever taking the position that INSLAW should be able to document or should be asked to document these claims that they make of privately funded enhancements?

A. Yes, and I think INSLAW offered to do that, if I remember correctly.

Q. All right. Going back to Exhibit 20, your letter of March 18 and the part of it that relates to the government's offer.

This offer --

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. Was this offer ever accepted by INSLAW?

A. Are we still back on the escrow agreement?

Q. No, sir, we are back on Exhibit 20, your letter of March 18. When I say this offer, I am talking about the language starting, "In lieu of the proposed escrow agreement, the government offers ..."

(Witness examines document.)

A. I think modification number 12 contains similar language.

Q. In fact, I mean modification number 12, signed by both yourself and Mr. Hamilton, reflects INSLAW's acceptance of the offer made in this March 18 letter; isn't that right?

A. The letter is extraneous, I don't think it is referred to in the contract modification. The contract modification stands by itself.

The parties agreed only to those things which are spelled out in the modification. Extraneous letters, if they are not referred to in the modification, are not part of the modification.

Q. But the fact of the matter is that --

A. This is a document prelim flare and apart of negotiations preceding to that modification 12 document. That is all I have to say on that, can say at this point.

Q. Well, let me ask you this. You say that you believe modification 12 contains similar language.

Would you dispute that it was on the basis of this offer contained in your March 18 letter that I have described earlier that you and INSLAW executed the mod 12 agreement?

A. Of course.

Q. All right.

A. No, let me finish, sir. Of course, this is only one document, and there were numerous phone conversations, conversations in person which formed the basis of modification 12. This is one document which is in the background.

Q. One of several?

A. One of several.

Q. All right. Now, going up to the top of page 2 of Exhibit 20, where you say, "Therefore, the data rights clauses of several different contracts between INSLAW and the government govern the rights of the parties. In order to determine whether the government has any rights in any private enhancements, it is necessary to know precisely what the private enhancements are and the requirements of the contract."

Is it your understanding that what you --

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. Is it fair to read that to mean, I will put it this way. Is it fair to read that language to mean that if INSLAW could demonstrate that its software contained some privately funded enhancements, that is, not funded by any government contract, and if those enhancements were not necessary to fulfill the requirements of this contract, then they would, well, then that the government would not have any rights in those enhancements?

MS. SPOONER: May I have that question repeated please?

(The reporter read as directed.)

MS. SPOONER: Thank you.

BY MR. KELLOGG:

Q. I know it's a complicated question.

A. It is a complicated question. The answer is, I don't necessarily agree with you, to the extent that those enhancements were incorporated to such an extent into the required -- item required under the contract removal of those enhancements would be disruptive.

Q. All right.

A. In other words, the contractor cannot incorporate subunits into an item and, thus, at a later time we are to the point where the government has, to construct its programs, to achieve its mission.

Q. Again, is it fair from what you are saying to conclude that if INSLAW could demonstrate that its software contained privately funded enhancements which were not required to do the tasks called for by this contract, and if they could be taken out without disrupting the government's activities under the contract, then INSLAW would have the right, and not the government, to those enhancements; is that fair to say?

MS. SPOONER: May I have that question reread, please?

(The reporter read as directed.)

MS. SPOONER: I am going to object to that question on the ground that it calls for a legal conclusion, and Mr. Videnieks is not a lawyer.

If you are asking for his opinion as a contracting officer in this case, then I have no objection.

MR. KELLOGG: Clearly, I am asking the latter, as you say, his opinion as the contracting officer. And I recognize he is not a lawyer.

A. Sure, and also the questions do sound a bit hypothetical and generally --

BY MR. KELLOGG:

Q. Just for the record I am asking it to get clear --

A. What do you mean by right?

MS. SPOONER: Mr. Kellogg, may I just say something?

Government contracting is, as I am sure you know, a very precise art and science, and Mr. Videnieks has been trained to deal in those very sort of precise and, some people say, picky details.

I believe that some of your questions are very vague. I have not objected to them because I believe that Mr. Videnieks is entitled and is quite capable of doing his very best to answer those questions.

But I think it's only fair that you accept the fact that he is going to ask you to clarify your questions, because they are very imprecise.

MR. KELLOGG: I will try to clarify them to whatever extent is necessary so that Mr. Videnieks has an understanding.

It's not my purpose to try to trap him into anything. He wrote the letter, or he sent it out under his name; and it bears on the issues.

And I am simply trying to find out what, in his mind, the logical consequences, if you will, were from what he has said in here.

BY MR. KELLOGG:

Q. I guess in response to my last question you are saying what do I mean by the right?

A. The word right, yes, in both versions of your question.

Q. All right. What I mean by it is in the hypothet that I gave you in my last question, in that case do I understand you to mean that INSLAW would have the right to the privately funded enhancements in that case, and that the government would not have any right to use it if INSLAW asked them to give it back to them?

A. That we would not have any rights to use them?

Q. Yes.

A. I would have -- you are asking for my opinion.

Q. Yes.

A. I would like to research that point. I am not sure that that is true. I would have to think about it for some time, give you a good answer on that.

Q. Would you have any reason to dispute, again, in that hypothet, that INSLAW would own those privately funded enhancements?

MS. SPOONER: Would you repeat again, Mr. Kellogg, the hypothetical?

MR. KELLOGG: Yes. Simply put, as simply as I can, the hypothetical is, if INSLAW could identify enhancements to its software which it had provided under this contract, which enhancements were privately funded and which enhancements were not necessary to do any of the tasks that are required to be done under the contract, and which enhancements could be taken out without disrupting the government's conduct of its affairs under the contract, in that case, in that hypothetical, in your view wouldn't INSLAW own those enhancements, those privately funded enhancements?

A. I am not sure they would. I am not a lawyer on the subject. You are basically saying there were voluntarily deliberous items beyond what is required by the contract. Is it a gift? I don't know.

BY MR. KELLOGG:

Q. All right.

A. I am not a lawyer. We should do legal research to decide what category that situation falls into.

Q. You have answered my question.

Now, turning to the offer you made in the later part of the letter, and here again, my purpose is simply to make sure that I understand at least what your meaning or what you thought your meaning was in writing this letter. Why don't you just tell me as you sit there, what is your lay person's understanding of the offer as it was made?

What was the government offering to do?

A. You are referring again to the second, to the page 2, next to last paragraph?

Q. Yes, sir. Let me say by way of introduction to that or predicate to that, I know the written language of the letter governs and I am not trying to get you to change it.

A. Not of the letter.

Q. Pardon?

A. The modification governs.

Q. The written letter is the final word as to what the written letter says.

A. Yes, sir.

Q. That is all I mean. I am not trying to get you to change that.

A. Fine.

Q. I am just asking you, as you sit there today, you tell me what you recall as to what is the gist of the offer that you were making there.

A. The government agrees it will not disseminate or disclose PROMIS software requested in our letter of December 6 beyond the EOUSA headquarters office and the 94

U.S. attorneys offices. And this offer was made upon the condition that we receive -- that INSLAW satifies our request under the data requirements clause to our satisfaction.

Q. Well, the offer talks about a resolution of the data rights issue. What was your intention there as to how the data rights issue would be resolved in terms of this offer?

A. INSLAW's delivery of the data requested under article 30, I believe it was, data requirements, in a form acceptable to the government.

Q. Yes, but if I understand both the letter and what you are saying correctly, there are two parts to the offer.

The first thing you want is, you want INSLAW to give you all of the software data --

A. That is what we want. That was the primary concern.

Q. For the government, sure.

A. Sure.

Q. You wanted to get that delivered to you. And if they did that in order to resolve this issue, you are saying in effect that you will agree not to disseminate that data that they do give you under article 30?

A. Yes, sir.

Q. Other than to the executive office and the 94 U.S. attorneys offices?

A. Yes, sir.

Q. Until this data rights issue is resolved?

A. Correct.

Q. All right. Then you go beyond that to describe how, in terms of your offer, you propose to try to resolve the data rights issue; isn't that right?

A. Let me look at the letter.

(Pause.)

A. I also state that this does not change the rights under the contract of either party.

Q. You have made that clear.

(Pause.)

A. I have looked at the next to last paragraph of the letter.

BY MR. KELLOGG:

Q. There again, tell me the gist of your understanding of what you were proposing as to a manner to resolve the data rights issue after you get the article 30 data requirements delivered to you and you have agreed not to disseminate it until this data rights issue is resolved, what is the gist of this proposal as far as how to resolve the data rights issue?

A. Basically, INSLAW would deliver, meet the requirement under article 30 and deliver the data. And assuming it was in a format acceptable to the government, and assuming that the government agreed that, indeed, there were proprietary enhancements incorporated in that data, then -- which were not necessary for the contract performance, then the government would discuss the matter further with INSLAW.

Q. All right. What did you mean or what was in your mind when you say then they would discuss the matter further if --

A. That we would discuss the matter further with INSLAW.

Q. Did you mean by that that you would negotiate over some form of payment if you wanted to keep any of those things that were in there but not required for performance of the contract?

A. Or payment by INSLAW to us.

Q. Pardon?

A. Or payment by INSLAW to us for the costs of -- any costs associated with removal of that data.

Q. I am limiting my question here to --

A. The discussions, basically, the letter says we will talk. If indeed any proprietary enhancements were identified and agreed to, indeed, there were proprietary, by the government, in that data submitted by INSLAW, then we would talk further.

Q. Doesn't your offer also say there that the government would then either destroy or return the enhanced versions --

A. I guess on the next page it does say that. It does say that on the next page.

Q. What is it the government would have destroyed or returned?

A. What this letter, I think, says is that if enhancements which INSLAW claims are proprietary and the government agrees are proprietary are identified, then the government would discuss with INSLAW whether these enhancements are necessary for contract performance or not, they would discuss the matter of disposal of the matter, disposal of these enhancements. What we are really talking about is disposal.

Q. So that I understand you clearly, when you got the language in here, the language which says, " Following resolution of the data rights issue, the government will review the effect of any enhancements which are determined to be proprietary and then either direct INSLAW to delete those enhancements from the versions of PROMIS to be delivered under the contract, or negotiate with INSLAW regarding the inclusion of those enhancements in that software."

Now, my question relates to that phrase beginning "Negotiate with INSLAW regarding the inclusion of those enhancements in that software."

What did you mean in your mind by that phrase "Negotiate with INSLAW regarding the inclusion of those enhancements in that software"?

A. Discuss the matter with INSLAW with respect of their, INSLAW's, having included enhancements which INSLAW claims are proprietary into the software delivered to us.

Q. Now, so that I understand, are you saying that in your mind when this offer was made and use of that term "Negotiate with INSLAW", that you did not envision any possibility that there would be any set of circumstances under which the government would pay any money to INSLAW following negotiations to include any of these privately funded enhancements, if there were any?

A. Like I said, it could have been a situation where INSLAW would have to pay us. This is an offer to discuss the matter further.

Q. I recognize that it is.

A. I don't know what I envisioned back then. I don't think I did envision payment to INSLAW.

Q. But apparently you did envision that INSLAW might have to pay the government something, is that right?

A. I mention that as a hypothetical possibility, the same way as you brought out a hypothetical.

Q. Well, so are you saying that either one would be an equally possible hypothetical in your mind?

A. I don't know if it's equal or not. We are really philosophizing back and forth here. I wish counsel would rule on that. I am not an expert on data rights.

Q. All right. Are you aware that Mr. Tyson testified in his deposition here recently that his understanding on this issue was that the government was prepared, if there were privately funded enhancements demonstrated to their satisfaction, not necessary for the contract, that the government was prepared to pay INSLAW for them?

MS. SPOONER: Is your question, Mr. Kellogg, whether this witness is aware of Mr. Tyson's testimony?

MR. KELLOGG: Yes.

A. I am not aware of Mr. Tyson's testimony. But the government cannot buy something or pay for something it does not need.

BY MR. KELLOGG:

Q. So does --

A. So he is wrong if he said that.

Q. If he did testify that way --

A. If there is no need, it's against the law to buy it.

Q. So you would be surprised --

A. That he would have said that.

Q. If he would have said that?

A. Or -- I don't think any government official would buy things that they don't need. I think implicit in your statement was that the software was unnecessary.

I am going to get a cup of coffee.

MR. KELLOGG: Sure.

(Recess.)

MR. KELLOGG: Mark this as Exhibit 22, please.

(Deposition Exhibit 22 was marked for identification.)

BY MR. KELLOGG:

Q. I show you Exhibit 22, Mr. Videnieks. Look it over and tell me whether that is a copy of what we have referred to here as modification 12 to the INSLAW 1982 contract with the Department of Justice.

A. Yes, sir, it is.

Q. This is what you have referred to in your testimony as mod 12?

A. Yes, sir.

Q. Turning to page 2, subparagraph B, where it recites that the government shall limit and restrict the dissemination of the software and provides that under no circumstances shall there be dissemination beyond the places limited, pending resolution of the issues extant between the contractor and the government under the terms and conditions of the contract.

Now, when the modification there speaks of pending resolution of the issues extant, was this data rights issue one of the issues that was extant and that you were referring to there?

A. INSLAW's claim as to data rights.

Q. Yes.

A. Okay. Yes, sure, it was.

Q. When you talked here about resolution of the issues, the way that issue of INSLAW's claim to data rights, the way that was intended to be resolved was the way set out in your offer in Exhibit 20, I believe it is; isn't that right, in substance?

A. I think another letter dealt with the subject, the transmittal letter which covered modification number 12, which I would like to look at.

Q. Mr. Videnieks, I don't think I have got that.

A. Well, it was very important.

Q. I am sure it's somewhere, I don't have it in front of me.

Can you tell me just what your recollection --

A. I would like to read it before I try to remember what the letter said. It's an important letter, it's directly related to modification number 12. I think it should be considered together.

Q. When you say it's a cover letter, is it a cover letter from you to Mr. Sherzer or from Mr. Sherzer to you?

A. It may have been addressed from me to INSLAW.

Q. It may have been, you say, a letter from you to INSLAW?

A. Right, it was two pages. In fact, Mr. Sherzer answered taking exception to some of the points contained in that letter.

Q. I take it this would have preceded the execution of the mod 12, on April 11?

A. It transmitted the finally executed modification to the contract.

MR. LYONS: Could we go off the record a minute?

(Off-the-record discussion.)

MR. KELLOGG: Back on the record.

BY MR. KELLOGG:

Q. Again, speaking about the reference in the mod

12 to resolution of the issues extant, would the parties' intention as to how to resolve those issues be as set forth in your letter of March 18, 1983, Exhibit 20, as modified, if at all, by your subsequent transmittal letter or any other subsequent correspondence?

A. I don't think my letter of March 8 --

Q. Not 8, it's 18.

A. 18. My question is, I have to look at it again to see if it addresses methodology.

Q. I don't want to get confused with your methodology. It does not address a method for INSLAW to prove to your satisfaction or to the government's satisfaction that any particular enhancements are proprietary, you are correct about that.

But it does discuss simply the procedure that there is going to be a process whereby INSLAW will have the obligation to try to prove that it has privately funded enhancements.

In other words, it would have to identify them and show you that these things were privately funded and that they are not required under this contract.

A. To our satisfaction, yes.

Q. Yes, okay. It was that process that was envisioned when you spoke in mod 12 of resolving the issues extant between the parties; isn't that right?

A. It is in plural, though, and this is one of those issues referred to.

Q. All right, data rights was one issue. The other issue, I take it, was what at the time, the advance payments?

A. I think modification number 12, on page 3, states: C, government shall continue making advance payments to the contractor. So that apparently was another issue.

Q. Would it appear by saying in the contract in mod 12 that the government shall continue making the advance payments, would that imply that the advance payments issue was resolved?

A. It would imply that the issue was resolved so long as the contractor adhered to the terms of article, the article dealing with advance payments.

Q. Yes. Then wouldn't it seem to indicate, then --

A. Which is D.

those issues referred to.

Q. All right, data rights was one issue. The other issue, I take it, was what at the time, the advance payments?

A. I think modification number 12, on page 3, states: C, government shall continue making advance payments to the contractor. So that apparently was another issue.

Q. Would it appear by saying in the contract in mod 12 that the government shall continue making the advance payments, would that imply that the advance payments issue was resolved?

A. It would imply that the issue was resolved so long as the contractor adhered to the terms of article, the article dealing with advance payments.

Q. Yes. Then wouldn't it seem to indicate, then --

A. Which is D.

Q. Wouldn't it seem to indicate, then, that the advance payments question would not be one of the pending issues to be resolved, referred to in B?

A. It may be, it may be, sir.

Q. Do you recall any other issue that decides the data rights that was to be resolved as referred to there?

A. It's a very general term. It's a broad term, issues extant. We had --

Q. Yes, I don't --

A. Data requirements was an issue, INSLAW's claim to data rights was an issue. I believe advance payments was still an issue, I am not sure.

It was an issue up to the point of execution of the modification.

Q. But here you are talking about resolution of issues which are tied to the dissemination of the software; isn't that right?

A. What issues would that be in your opinion? You are limiting. I am saying it's broad, you are saying it's limited, you are saying it's narrow.

Q. I am not. I am trying to ask you for your recollection.

A. My recollection is, for example, are the three issues which I just enumerated, data rights, data requirements, advance payments, contractors abiding by the advance payments provision, the -- there were some inter-related issues discussed which led up to modification number 12.

Q. And by this subparagraph B here, the government was agreeing to restrict the dissemination of the software as specified there pending resolution of all of those issues that you are talking about?

A. That's the -- to the best of my recollection, what I read there.

Q. Following the execution of this mod 12, did INSLAW ever propose a method for demonstrating the proprietary enhancements?

A. I think I remember that in INSLAW's correspondence they do offer methodology and ask for our concurrence.

Q. In your recollection, how long was that after the mod 12 was executed?

A. I don't recall.

Q. Would it be, do you think it was within a month?

A. I don't recall.

MR. KELLOGG: I would ask that you mark this set of exhibits, the first one as exhibit 23, and the others as 23 A, B and C.

(Deposition Exhibit 23, 23 A, 23 B, 23 C and 23 D were marked for identification.)

MS. SPOONER: Is that an identifiable set that I have, Mr. Kellogg?

MR. KELLOGG: Yes, it's in the middle set that I gave you. I think it should be the first four documents. It states with memo of Joyce Deroy to Hamilton, together with three attachments.

MS. SPOONER: Thank you. Now I have four attachments, did you mean to leave out one of them?

MR. KELLOGG: Is the fourth one?

MS. SPOONER: I have an A, B, C and D. D is --

(Pause.)

MR. KELLOGG: I misspoke.

BY MR. KELLOGG:

Q. Take a look at that set of documents marked exhibit 23 and 23 A through D, I believe it is.

(Witness examines document.)

A. I looked at them.

BY MR. KELLOGG:

Q. Mr. Videnieks, exhibit 23 and 23 A through D consists of a memorandum from Joyce Deroy to Mr. Hamilton, together with some attachments which appear to be prepared in response to this matter and for submission to you.

Do you recall ever seeing those before?

A. I think I have these documents in my file. As to when I received them, I don't recollect.

Q. I think it's fair to say that you probably received them sometime after they are dated there in early April of --

A. I don't know whether INSLAW would have submitted internal documents to us attached to their correspondence, they may have.

I know I have -- I have seen these documents. I have seen them recently, and I can't recall when I saw them a few years ago.

Q. Does this look like the submission that you received from INSLAW regarding a proposed method for identifying the enhancements?

A. I don't think I see a methodology described in here. The Joyce Deroy memorandum identifies Bill Hamilton, claimed proprietary enhancements -- demonstration of funding sources.

Their conclusions, but not the methodology, to the best of my cursory review here, what I can conclude is that these are conclusory-type documents.

Q. At some point, though, your recollection is that INSLAW did submit to you a proposed methodology for performing this task, that is, for identifying the privately funded enhancements for your consideration?

A. At some time they did, yes.

MR. KELLOGG: Mark this as exhibit 24.

(Deposition Exhibit 24 was marked for identification.)

(Witness examines document.)

A. I have looked at this exhibit 24.

BY MR. KELLOGG:

Q. Exhibit 24, is that a copy of a letter that Mr. Sherzer sent you, together with a series of further materials on this enhancement issue?

A. Yes, sir.

MR. KELLOGG: Mark this as Exhibit 25.

(Deposition Exhibit 25 was marked for identification.)

(Witness examines document.)

MS. SPOONER: Exhibit 25 contains two attachments?

MR. KELLOGG: Yes.

A. Okay, I have looked at 25.

BY MR. KELLOGG:

Q. Is 25 a copy of a May 4, 1983, letter to you from Harvey Sherzer, together with two attachments that were enclosed?

A. Yes, sir.

Q. Again, this letter was additional follow-up regarding this enhancements issue, wasn't it?

A. Yes, sir.

Q. If you will turn to the second attachment which appears to be --

A. Could I comment on the letter, first, second paragraph?

Q. Sure.

A. Mr. Sherzer seems to be saying here that, I will read the government enjoys "unlimited rights under the contract."

Q. Yes, his letter speaks in terms of the copyrightability of software provided which was developed at government expense, if you will look at that earlier sentence there. Maybe I misunderstood your point.

To clarify, the letter addresses two matters, one being the enhancements question and the second being this copyright question which is addressed in the second paragraph of the letter; is that correct?

A. I just brought up the point that Mr. Sherzer states that we have unlimited rights under the contract.

Q. Yes, he is referring there to software developed at government expense.

A. Items delivered under the contract. It's A side issue anyway. I thought it was interesting.

Q. In any event, if you turn to the second attachment, a memorandum dated April 26, 1983, to Mr. Sherzer by Joyce Deroy.

Before we get to the memorandum, in the first paragraph of his cover letter Mr. Sherzer says, the last phrase of the second sentence, "The company proposes the accumulation of additional supporting information and documentation using the methodology described in the memorandum attached hereto."

A. Which, I am lost. Where are we?

Q. I am sorry.

MS. SPOONER: You referred to the attachment. I think you are reading from the letter.

BY MR. KELLOGG:

Q. I jumped back to the cover letter.

A. Okay.

Q. The second sentence of the cover letter, Mr. Sherzer says, "The company proposes the accumulation of additional supporting information and documentation using the methodology described in the memorandum attached hereto."

I assume that the memorandum describing the methodology that he is talking about there is this second attachment, the April 26 memo of Joyce Deroy; is that correct?

A. Are you asking me to comment on the assumption?

Q. Well, he wrote you the letter. Is that what you understood him to mean?

accumulation of additional supporting information and documentation using the methodology described in the memorandum attached hereto."

A. Which, I am lost. Where are we?

Q. I am sorry.

MS. SPOONER: You referred to the attachment. I think you are reading from the letter.

BY MR. KELLOGG:

Q. I jumped back to the cover letter.

A. Okay.

Q. The second sentence of the cover letter, Mr. Sherzer says, "The company proposes the accumulation of additional supporting information and documentation using the methodology described in the memorandum attached hereto."

I assume that the memorandum describing the methodology that he is talking about there is this second attachment, the April 26 memo of Joyce Deroy; is that correct?

A. Are you asking me to comment on the assumption?

Q. Well, he wrote you the letter. Is that what you understood him to mean?

A. It's one of these two memoranda. Let's see if the first one contains any methodology or not.

Q. The first one seems to deal with the copyright question, and that is why I --

A. Then he must be referring to the second memorandum.

Q. In any event he goes on to say, now I am again referring not to the memo, but to the cover letter, he goes on to say in the last sentence of the first paragraph, "Since the effort necessarily will be time consuming, I would request that you contact me, indicating whether the approach proposed suffices for the department's purposes and whether any revisions there to are suggested."

So clearly, he is submitting this to you for review and asking you or the other government representatives to tell him, this is what we propose to do, is this going to be satisfactory for your needs, isn't that the gist of that?

A. That's true.

Q. All right. Do you recall making any response to that question, in effect, that he asked of you, whether this was adequate for the government's needs?

A. I don't specifically recall a response. I do recall that the government chose to let INSLAW determine, itself, which methodology best suited their ability to comply with our requirement under article 30.

Q. I take it the government, you do recall that the government declined to tell INSLAW what there was about this particular methodology that was unsatisfactory?

A. I don't recall what the government said. But I do remember we had specific technical problems with respect to the methodology.

Also, we were -- in the situation, we were after the end result. We are after fulfillment of the request; the methodology is up to the contractor. One could approve a certain methodology and then the end result may not satisfy the requirement.

Q. So you were not, in any event, you do recall that the government did not approve this proposed methodology; isn't that right?

A. Did he ask for our approval? We were not in an approval situation. The request is, please contact me whether the proposed approach suffices.

Q. Well?

A. We discussed it among ourselves and decided that since INSLAW is making the claim that any supporting data must be readily available, and we would rather not get involved in their in-house effort how to produce the required documentation software.

Q. All right. So you decided not to tell INSLAW whether or not this particular proposed methodology would suffice --

A. I don't recall that specifically. We may have commented to them with respect to this specific proposed methodology. However, we, overall, decided that the method of satisfying our request is INSLAW's decision.

Q. Implicit in that is you decided that INSLAW could do whatever it wanted in terms of the methodology and you wouldn't tell them in advance whether the methodology was acceptable or unacceptable, you decided you were going to wait to see whatever the end result was that they submitted and you would review that material and see whether the material satisfied the contract, and you wouldn't get involved with telling them anything about the methodology?

A. Yes.

Q. Is that fair to say?

A. Yes, that's fair to say because we felt that since they made a claim, the supporting data was readily available.

Q. All right, do you have any --

A. Or should be readily available.

Q. Let me ask you this. Going back to Mr. Sherzer's May 4 letter to you there, he indicates there that to gather the information together according to the methodology that they were proposing would be quite time consuming.

Did the government feel that that claim that it would be time consuming was inaccurate?

A. I can't recall any specific feelings on my part or on the feelings of others how we felt with respect to Sherzer's statement there.

MR. KELLOGG: Mark this as 26, please.

(Deposition Exhibit 26 was marked for identification.)

(Witness examines document.)

MS. SPOONER: Would you be coming to a convenient stopping point soon?

(Off-the-record discussion.)

A. Question. This refreshes my memory. However, if we had this letter as the next exhibit, we would have saved some time. I could have read it beforehand, if we asked prior questions.

BY MR. KELLOGG:

Q. The way this works, Mr. Videnieks, is, I will have to do the questions, you will have to do the answers.

A. Right.

Q. I will try to do the best I can. I know that you are trying to do the best that you can.

A. That's right.

Q. Referring to exhibit 26, that would appear to be a response by you dated June 10, 1983, to Mr. Sherzer to his letter to you of May 4 that we have marked here as Exhibit 25; is that correct?

A. Yes.

Q. I gather that reading the letter, this refreshes your recollection, and in this letter you did say in the last paragraph that, "your letter," referring, now, to Mr. Sherzer's May 4 letter to you, "requests that the government either approve the INSLAW proposal for identifying and demonstrating that certain enhancements are proprietary, or suggest revision to that approach. The government is in a position to do neither. The burden of identifying those enhancements and proving that they were in fact developed at private expense outside the scope of any government contract remains with INSLAW."

So does this refresh your recollection that you actually advised Mr. Sherzer of the position that you indicated you recalled was the substance of the position the government people were taking?

A. Yes.

Q. Who wrote this letter, sir?

A. It -- I can't recall who the -- it may have been a joint effort by counsel, EOUSA and me. I don't specifically recall who put the major effort into it.

Q. At this point counsel would still be Mr. William Snider?

A. I think so, on June 10, '83, I think he was still there.

Q. EOUSA would probably include Mr. Brewer and Mr. Rugh at that point?

A. Yes, sir and Mike Snyder.

Q. And Mike Snyder as well?

proprietary, or suggest revision to that approach. The government is in a position to do neither. The burden of identifying those enhancements and proving that they were in fact developed at private expense outside the scope of any government contract remains with INSLAW."

So does this refresh your recollection that you actually advised Mr. Sherzer of the position that you indicated you recalled was the substance of the position the government people were taking?

A. Yes.

Q. Who wrote this letter, sir?

A. It -- I can't recall who the -- it may have been a joint effort by counsel, EOUSA and me. I don't specifically recall who put the major effort into it.

Q. At this point counsel would still be Mr. William Snider?

A. I think so, on June 10, '83, I think he was still there.

Q. EOUSA would probably include Mr. Brewer and Mr. Rugh at that point?

A. Yes, sir and Mike Snyder.

Q. And Mike Snyder as well?

A. Right.

Q. Do you have any recollection of any particular input that Mr. Rugh made in the drafting of this letter?

A. I am sure he must have participated. The parts of the letter which deal with technical matters, I am sure that Mr. Rugh may have had an input or a role in drafting.

Q. How about the last paragraph in which you decline to either approve or disapprove the suggested procedure that INSLAW had advanced, did Mr. Rugh have any --

A. That could have been me paraphraseing a memorandum from either Rugh or counsel or anybody, or it could be my lifting out language from memoranda submitted to me. I don't specifically recall.

Q. Do you recall getting memoranda from either the executive office or Mr. William Snider, or both?

A. Memoranda and/or telephone conversations, advice.

Q. Do you recall any particular input in the drafting of this letter that Mr. Brewer may have made?

A. I don't recall particular input. That does not mean it was not made.

Q. I gather you don't recall Mr. Brewer having any input in that last paragraph?

A. Not specifically. When one, in a situation like this, establishes a deadline, it is usually discussed among procurement, legal and project.

Q. Mr. Videnieks, I think it's fair to say that this issue was never resolved, that is to say, INSLAW never did submit an identification of all of its claimed enhancements in a manner that the government was satisfied with; isn't that correct?

A. I think the operative word is not identification, I think it's -- there is a second word which we should use, which is substantiation.

Q. All right, identification and substantiation?

A. And substantiation.

Q. Whatever it is, so far as the government was concerned, INSLAW never did submit it in a form satisfactory to the government; isn't that right?

A. To the best of my recollection, INSLAW did not show to our satisfaction that, indeed, there were claimed proprietary enhancements.

Q. As a matter of fact, sometime in August of 1983, after further exchange of letters, there was an informal agreement reached that simply INSLAW was not going to seek to try to prove this any further at that point, is that right?

A. I don't recall any such agreement. That does not mean it was not made. To the best of my recollection, the issue was still open.

Q. I don't mean to imply the issue wasn't open. But what I am reading from here, and the reason I ask this question is an August 1, 1983, handwritten memo of Mr. Gizzarelli, which says as follows: "In a meeting this date," August 1, 1983, "Peter Videnieks, Brick Brewer and I agreed that Joyce Deroy and her group would do no additional work to justify INSLAW's claim to proprietary rights to PROMIS because Peter and Brick will not accept our methodology to substantiate our claim."

MS. SPOONER: Is there some reason, Mr. Kellogg, why you prefer the witness not see that?

MR. KELLOGG: No, you are welcome to see it. I mean, it's not his memo.

MS. SPOONER: I understand.

MR. KELLOGG: Isn't that in your papers?

MS. SPOONER: Legal sized?

MR. KELLOGG: Yes.

MS. SPOONER: I don't believe so.

MR. KELLOGG: Let's mark this one. You can take a look.

(Deposition Exhibit 27 was marked for identification.)

(Witness examines document.)

A. Speaking for me, it's an inaccurate memorandum.

BY MR. KELLOGG:

Q. Do you recall attending a meeting with yourself, Mr. Brewer and Mr. Gizzarelli in that timeframe?

A. I don't recall it, any such meeting. However, that does not mean it did not take place.

Implicit in this note is that we approved Joyce Deroy's effort up to a point.

Q. No, well --

A. The way it's stated.

Q. I don't read it as making that implication and I am not trying to assert that implication.

A. Neither did we -- I am speaking for myself, not for Brick.

Q. Yes, okay.

A. The memorandum says in a meeting, I, Brewer and Gizzarelli agreed that Joyce Deroy and her group would do no additional work. I don't recall such -- I would have to deny making any agreement.

The position taken by us was that it's INSLAW's own concern as to how they meet our requirement under the data requirements clause.

This is a loaded memorandum, seems to imply that the government was working jointly or something with INSLAW to -- for INSLAW to comply with our request. That was not the case.

Q. You were not working jointly with INSLAW --

A. No.

Q. -- to assist INSLAW in answering your request?

A. Excuse me?

Q. I say the government was not working jointly --

A. That memorandum, to me, my reading it, implies some approval or agreement by the government in Joyce's efforts. That's contrary to our positions taken.

Q. As I say, your position is the government never agreed to any efforts that Ms. Deroy may have made, whatever efforts she made that was --

A. I don't know what efforts --

Q. I understand. Whatever efforts she made was INSLAW's business and the government had nothing to do with it, is that right, as far as agreeing or disagreeing?

A. Yes. It was my position that INSLAW meet the requirement the best they knew how.

Q. And how they did it was up to INSLAW?

A. Since it was their claim. And when one normally makes a claim, the substantiation should be easily available.

Q. In any event, there is no dispute that INSLAW never did substantiate its claims to the government's satisfaction on this proprietary enhancements question?

A. That is correct.

MR. KELLOGG: I think this is a good time to stop for lunch, and if we could, let's come back at 1:30

(Whereupon, the deposition was recessed at 12:30 p.m., to resume at 1:30 p.m.)

AFTERNOON SESSION

(1:30 p.m.)

BY MR. KELLOGG:

Q. Mr. Videnieks, we are back from lunch break and ready to resume the deposition.

Now, initially this afternoon, Mr. Videnieks, I want to ask you a series of questions governing, relating to what I will call generally the data center time sharing cost dispute.

MR. KELLOGG: I want to mark this as the next exhibit, Exhibit 28.

(Deposition Exhibit 28 was marked for identification.)

MS. SPOONER: This is the new one that you gave me, is that right?

MR. KELLOGG: Yes.

(Witness examines document.)

MR. KELLOGG: Off the record.

(Off-the-record discussion.)

BY MR. KELLOGG:

Q. Mr. Videnieks, have you reviewed quickly what has been marked as Exhibit 28?

A. Yes, sir.

Q. That appears to be a copy of a negotiation agreement between the government and INSLAW, dated December 15, 1982; is that correct?

A. Yes.

Q. Have you ever seen that before, to your recollection?

A. Sir?

A. Yes, sir.

Q. Can you describe to me just generally what a negotiation agreement is in relation to one of these computer contracts?

A. This negotiation agreement pertains to all government contracts.

Q. Between the government and INSLAW?

A. Right.

Q. So this is something that would have been reached outside of the contract that you were the contracting officer on with INSLAW ; is that right?

A. Yes, sir.

Q. But by definition it had application in certain respects to the administration of your contract, is that right?

A. In certain respects in accordance with applicable regulations.

Q. Turn your attention to paragraph C on the first page under computer center.

A. Yes.

Q. Do you see down there where it says, the third line, "Fixed with carry forward provision effective from 10-1-82," and then under the column "Period 2" it says 9-30-83. Then it has a rate, .067/SRU. Do you see that, sir?

A. Yes, sir.

Q. Is it accurate to describe that number there, the rate .067/SRU, as being a fixed rate with a carry forward provision to be applied to INSLAW's computer center operations for purposes of certain parts of the INSLAW contract?

A. No.

Q. You tell me what it is.

A. I think the .067/SRU is not a rate, but a dollar or cent amount. It's not identified --

Q. Why would it be in the column headed rate if it's not a rate?

A. Well, maybe you feel it's a rate. You asked my opinion what it is, I feel it was dollars and cents.

Q. But you agree it's in a column that is labeled rate, don't you?

A. Yes, sir.

Q. It doesn't have any dollar sign on it, does it?

A. No, sir.

Q. Whether it's a dollar amount or a percentage or some other type rate, I take it that you would not dispute it is characterized here as being fixed with a carry forward provision; is that correct?

A. The words "fixed with carry forward provision" are in line with the .067/SRU.

Q. Well, if you notice up in the first line under that same heading, type, it says, describing the period of January 1 of '81 to 9-30-81, it has the word provisional.

A. Yes.

Q. And then in contrast to that in the next two lines, including the third line that I have already called your attention to for fiscal year '83, both of them in contrast say "fixed with carry forward provision," is that correct?

A. Yes.

Q. Do you know, sir, what the difference is between a provisional type and a fixed with carry forward provision?

A. Fixed rates can be provisional.

Q. Pardon me?

A. Fixed rates can be provisional.

Q. Well, that's not my question. My question is, do you know what --

A. There may be no difference, sir. My answer is, fixed rates can be provisional.

Q. On this piece of paper they appear to be described in different ways. One appears to be described with the single word provisional, and the other two are described, fixed with carry forward provision.

Now, my question is, do you know as you look at that whether those two different terms mean anything different from each other?

A. No, sir.

Q. They may or may not, you just don't know?

A. I said no, sir.

Q. Well, may they mean something different and you just don't know whether they mean two different things?

A. I think these are all provisional rates, sir.

Q. Would it be your testimony that you think these two terms mean effectively the same thing?

A. My testimony is that this document contains provisional rates.

Q. Mr. Videnieks, you know, we have been here for almost two days now, and I am not trying to prolong this. But my question is not, I am not trying to get into a legal debate with you.

I am just trying to probe your understanding, if you have any, of these terms in the context of the government contract administration that you were charged with.

And my question to you is simply, as these two different terms are used on this document, do the two terms mean anything different from one another in your understanding of them, or do they both mean the same thing, or do you not know?

A. All of the rates contained on this document are provisional rates. They all are fixed provisionally. In other words, these are rates, provisional reimbursement rates. They are fixed for a period of time.

Q. I guess let me ask you this question. In your opinion would this mean anything different if, instead of having the phrase "fixed with carry forward provision" on the two lines relating to fiscal year '82 and fiscal year '83, if instead of that they had the word provisional, would there be any difference in its meaning to you?

A. No. These are all --

Q. All right, you have answered the question.

A. These are provisional rates.

Q. All right.

A. Rates, slash, amounts.

MR. KELLOGG: Mark that as Exhibit 29, please.

(Deposition Exhibit 29 was marked for identification.)

BY MR. KELLOGG:

Q. Take a look at Exhibit 29, please. I will just tell you, that is a part of an appendix to the request for proposal by the government in this contract that you were contracting officer on.

(Witness examines document.)

BY MR. KELLOGG:

Q. Do you recall ever seeing that before, sir?

A. Yes, sir.

Q. Does that appear to be a copy of an appendix to the RFP that was issued in connection with this particular contract or what became this INSLAW contract?

A. No, sir.

Q. What does it appear to you to be?

A. It appears to be an appendix to the statement of work I was included in the RFP.

Q. It was included in the RFP that was issued in connection with this contract, yes?

A. Not in connection with the contract, but that resulted in the contract, yes.

Q. All right, that resulted in the contract.

A. Yes.

Q. Looking at page 2, if you can look at page 2 of that document. The first full paragraph but the second paragraph on the page, you see there in the middle, towards the end of the paragraph where it says, "No costs were maintained on the development of the system, so this could not be evaluated, but JMD estimated that it was costing about 500,000 a year to run the system in the Chicago office, alone"?

A. Yes, sir.

Q. Do you recall that fact ever coming to your attention in connection with the time sharing dispute that developed in 1983 and 1984 here with INSLAW?

A. I don't know.

MR. KELLOGG: Mark this, please, it's Exhibit 30.

(Deposition Exhibit 30 was marked for identification.)

(Witness examines document.)

MR. KELLOGG: Off the record.

(Off-the-record discussion.)

MR. KELLOGG: Let's go back on the record.

BY MR. KELLOGG:

Q. Mr. Videnieks, looking at Exhibit 30, this appears to be a copy of a letter sent to you by date of April 8, 1983, from Murray Hannon, the INSLAW controller; is that correct?

A. Yes, sir.

Q. In that letter he makes reference to a letter from Mr. James Dimm, to you of March 8, 1983.

He also indicates, referring to the letter, that the Dimm letter indicates that, "Your offices are submitting transactions at a rate far greater than we had anticipated when we submitted our initial cost proposal. It is our understanding that you do not wish to restrict their usage of the system, and, therefore, we have prepared this request for modification."

And he also refers to a rationale for the time sharing billing procedure.

Do you recall receiving this letter and the attachments to it?

A. I wish I could see the attachments, sir. That would refresh my memory. The letter obviously is addressed to me, signed by Hannon.

Q. Let me ask you this. I take it that you do recall at some point receiving a letter from somebody at INSLAW advising you or claiming that because the various U.S. attorneys offices were using the time sharing computer facility at a rate above that which had been estimated, that INSLAW was asking to increase the allowable costs for time sharing under the contract, you remember them --

A. That's not what this letter says, sir.

Q. I am not saying it does.

A. I am looking at this letter, it's addressed to me, it's signed. I acknowledge its existence.

Q. Well, the first sentence says, "The purpose of this letter is to request a contract modification to cover costs and fee associated with the higher and anticipated use of our time sharing service," isn't that right?

A. Yes, sir, but you mentioned allowable costs.

Q. Now, if I did, I did that inadvertently and I know that is a term of art in government contractese, and I didn't intend to. I didn't intend to.

To the best of your recollection, was it in this letter and any associated attachments that INSLAW first made a claim to you that they wanted to modify the time sharing costs because they claimed that the use was above what it was anticipated to be or estimated to be?

A. Sir, I have to answer no, because your question is not technically correct.

Q. Well --

A. So the answer is no.

Q. All right. Do you recall INSLAW ever sending you a letter making this request that you modify the contract because the time sharing usage was above what had been anticipated?

A. Yes, sir.

Q. All right. I take it this letter, Exhibit 30, may or may not be such a request?

A. It may or may not. Depends on the attachments.

MR. KELLOGG: Mark this as 31, please.

(Deposition Exhibit 31 was marked for identification.)

BY MR. KELLOGG:

Q. Take a look at that memo that is marked Exhibit 31.

(Witness examines document.)

BY MR. KELLOGG:

Q. Have you ever seen that before, sir?

A. Yes, sir.

Q. This Exhibit 31, does it appear to be a copy of a memorandum from Jack Rugh to you, dated May 6, 1983?

A. Yes, sir.

Q. Does it appear to be Mr. Rugh's comments on the request for contract modification that was made in Murray

Hannon's letter to you of April 8, identified here as Exhibit 30?

A. Yes, sir.

Q. Mr. Rugh's comments are directed to the time sharing cost issue, are they not?

A. Yes, sir.

Q. Turn to page 2 of the memorandum, Exhibit 31. Down there indented in subparagraph 2, this is a part of Mr. Rugh's analysis of his attempt to estimate INSLAW's actual costs, I believe.

And in part 2 he mentions there, "INSLAW has three people on their data center operations staff. Assuming that one person is devoted full-time to time sharing operations, (a considerable over estimate), the operations cost should not exceed $2,000 per month."

Do you see that there, sir?

A. I see it.

Q. Did it ever come to your attention at any point after this, after May 6 of 1983, that that estimate that Mr. Rugh was making, which was based on three people, three employees of INSLAW working at the data center on this time sharing, did it ever come to your attention that that assumption was incorrect?

A. I don't know.

Q. You have no recollection of it ever coming to your attention at any time after May 6 of 1983?

A. I don't remember right now. I'd like to read the rest of this memorandum.

Q. Sure, go ahead.

(Pause.)

A. Okay, I have looked at it.

BY MR. KELLOGG:

Q. Well, my question to you is, and maybe you have answered, I don't think you did, but in that subparagraph 2, on page 2, as a part of Mr. Rugh's analysis of what he is trying to estimate to be INSLAW's actual costs of operating the computer and the time sharing, part of that, he mentions that INSLAW has three people on their data center operating staff, operations staff.

And he utilized that premise, that factual premise, in calculating what he estimates the costs for that part of the operation should be; isn't that right?

A. It appears to be a part of his technical analysis.

Q. My question to you is simply, did it ever come to your attention at any time after May 6, 1983, that in fact INSLAW did not have only three people working on the data center operations staff in connection with the time sharing, but in fact, had a good deal more?

A. I think the number -- the answer is, I don't know. But, I don't know, the number fluctuated.

Q. I am not talking about their being three, in fact, when Mr. Rugh wrote his memo, and later INSLAW adding or subtracting some people at a later time, that is not my question.

My question to you is, do you have any recollection of ever finding out that when Mr. Rugh wrote this memo, his assumption that there were three people whose time was attributable to this time sharing data center operation, that that assumption was not correct and that there were substantially more employees who were working on this?

A. No.

Q. That never came to your attention?

A. No. I personally went out to the data center, together with the cognizant auditor, and the official in charge of negotiating provisional rates, including SRU's, and saw only one person at the data center.

Q. Did it ever come to your attention that there were other people at other locations working on the time sharing matter, the time sharing computer, whose time was being charged to this?

A. Yes.

Q. As a matter of fact, all told, there were something like 17 people who were working on the time sharing work; isn't that right?

A. That is -- are we still talking about paragraph 2?

Q. Well --

A. Which talks about the data center.

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. I recognize paragraph 2 talks about the data center. But I think if you will read through the various components of his calculation of an estimated cost of running the time sharing operation, that's the only manpower figure that he calculates in there.

A. It's a very complex and lengthy memorandum. I would have to read it probably three or four times to be able to discuss it with you.

Q. Well, sir, I am just asking you. You can take as long as you want, and if you want to be here until midnight we will do that.

MS. SPOONER: No, we won't.

BY MR. KELLOGG:

Q. I want you to tell me whether there is anything in here that you see that you can point your finger to where Mr. Rugh has calculated any manpower cost for the operation of this time sharing center other than these three people in that paragraph 2.

A. I am a nontechnical person, would have to evaluate an expert's analysis. I sought his advice, not vice versa. I could make an attempt at it, if you wish. But it will be time consuming.

Q. There are six subparagraphs that I see in which he describes the components of his analysis.

A. It's his advice to me.

Q. I understand.

A. I accepted it.

Q. I understand that, I am not questioning that you accepted it. I am just asking you a question.

The first question is, is there anywhere in this memo that you can point to that Mr. Rugh calculated any manpower costs other than the three people at the data center operations staff in subparagraph 2?

A. I will need two hours to analyze it.

Q. You can just go right ahead.

A. Beginning now, good.

MS. SPOONER: Mr. Kellogg, let me just say that we are not going to be here until midnight. As far as I am concerned this deposition is going to end at a reasonable hour. If you want to continue it sometime next week, that is what we will do.

I think what this witness is trying to tell you, and he's said it clearly, is that he is not a technical person and that it will take him some time to review this memorandum.

If you wish him to take the time to do that that is your prerogative and we will do it. But not at the expense of going until midnight.

MR. KELLOGG: My comment of going until midnight is not at my behest, but simply because I, at Mr.

Cooper's request, he insisted that however long it takes, that we finish today. I am perfectly happy to carry it over if need be.

MS. SPOONER: The question is do you want to spend the time today for this witness to review this memorandum given that he has told you he is not --

MR. LYONS: Let's go off the record.

MS. SPOONER: Excuse me, may I finish?

MR. LYONS: We are off the record, are we not?

THE REPORTER: No, we are not.

MR. LYONS: I apologize. Excuse me. Finish your statement.

MS. SPOONER: This witness has indicated to you that he is not a technical person and does not feel qualified to review the memorandum for the purpose you have asked.

He's explained to you it will take him some time to do that. Obviously you are entitled to require him to do that if you wish.

I just want to make sure that that is the way you wish to spend this afternoon.

(Off-the-record discussion.)

BY MR. KELLOGG:

Q. Mr. Videnieks, let me ask this question. Maybe we can shortcut this.

Did it ever come to your attention at any time after May of 1983 that INSLAW had other employees at its main office on 15 Street, not at the data center in Lanham, who did work connected with the operation of the time sharing center in Lanham, even though they didn't physically work there, did that ever come to your attention?

A. We are on the record?

Q. Yes.

A. Yes, sir.

Q. When did it come to your attention, do you recall?

A. I don't recall.

Q. Would it have been as long as a year after this?

A. I don't recall.

Q. Would it have been two years after this?

A. I don't recall.

Q. Was it before the contract terminated that it came to your attention, do you think?

A. Before the contract was terminated?

Q. No, before it ended that March of 1985, by its own terms.

A. It may have.

Q. In any event you get this memorandum that is marked Exhibit 31 from Mr. Rugh. What, if anything, do you do based on Mr. Rugh's analysis that is contained here?

A. I am concerned about this notification of an overrun, impending overrun.

Q. Excuse me, so I understand, when you say this notification of a pending overrun, you are speaking about Hannon's April 8 letter in which he says --

A. Yes, sir, not specifically Jack's memo.

Q. Right. So you are concerned about that. Rugh gives you this comment about it, his technical input. What do you --

A. I am more concerned now.

Q. What do you do as a result of getting this memo?

A. I become concerned that we are being overcharged, this contract, the contract in question is being overcharged for computer center costs.

A. I don't recall any interim positions as such. The executive office concurred with the suspension letter, I think they actually concurred on a copy of the suspension letter.

Q. Was that something that you drafted before you had these further discussions with the executive office people, or after?

A. I can't recall. The letter was drafted by an organization which was known as administrative counsel, at the time.

Q. Would this have been Mr. William Snider again at this point?

A. No, sir.

Q. Who was the administrative counsel at that time?

A. It was a lady attorney working for Mr. Snider.

Q. What was her name?

A. I believe her first name was Liz, and last name may have been Nagy, N A G Y.

Q. I take it you had discussions with this lady attorney, Ms. Nagy, if that was her name, about this question, as well?

A. I don't specifically recall.

Q. But you think you would have had such discussion?

A. Yes, sir.

Q. You believe the eventual letter notifying INSLAW that these payments would be suspended, that would of been initially drafted by Ms. Nagy?

A. Yes, sir.

Q. Did you have any input into the drafting of that letter?

A. I signed it.

Q. I know you signed it, but did you have any input into drafting it?

A. No, sir, it was -- we felt it was a significant issue, and the facts are that that lady drafted it. It's a very short letter.

Q. So the answer is you did not have any input --

A. I may.

Q. -- except to sign it?

A. I don't recall fine detail as to whether I changed anything that she gave me or not. Whether it was in final form or not, I don't recall that. Whether she gave me the language to use.

Q. What is your recollection as to when that notification came?

A. Not good. My recollection is not good.

Q. Well, I know, but what is the best recollection you have as to when that took place?

MS. SPOONER: You are asking this witness for the date of the document?

MR. KELLOGG: I am asking him to give me his best recollection as to the time period when this notification of the suspension of payments came in relation to the time the issue was first raised in April and May of '83.

BY MR. KELLOGG:

Q. Are we talking about three months later, six months later, a year later?

A. I think it would have been within three months.

Q. All right. Now, I take it the practice was that INSLAW was submitting vouchers every month, pretty much, weren't they?

A. I think we, at INSLAW's request, authorized INSLAW to submit vouchers twice a month.

Q. All right, so twice a month. Assuming it took two or three months or thereabouts between the time that this issue arose and when your letter went out suspending the payments, or suspending portions of the payment, were you, or did you suspend portions of every succeeding payment until the issue might be resolved at a later point, or did you just suspend payment on specific invoices, vouchers that had already been submitted at that point?

A. I don't understand your question.

Q. The recommendation that was contained in Exhibit 34 just related to two specific vouchers. It recommended that you consider suspending these particular portions of the payments requested on these two particular vouchers.

Yet, obviously, the issue involved, I take it, would keep recurring with each voucher, to the extent that each voucher would be claiming payment for the time sharing costs, the data center costs.

And my question in light of that is, when you suspended, did you suspend from that point forward all, so much of each voucher, or just specifically suspend on vouchers that had then already been submitted?

A. I did not retroactively suspend money. There is no way to do that.

Q. No, I didn't mean retroactively. I don't have the precise facts here in front of me, but let's just assume that when you make your decision to issue a letter suspending, at that particular time INSLAW has three vouchers that they have presented for payment. And you make your decision that you are going to suspend a certain part of each one of those three. Am I --

A. It's a bad example. We tried to process INSLAW's vouchers as quickly as we can, we did not try to --

Q. Suppose you only have one when you make your decision. The point I am trying to get at is, was your decision to just suspend the one that was then pending or however many were then pending and not acted on, or was your decision also to tell them, look, not only are we suspending on these vouchers, we are going to suspend on every future voucher for time sharing costs on this same rationale until this thing gets settled to our satisfaction, do you understand --

A. What decision are you talking about, sir?

Q. The decision you say was reflected in your letter that was drafted by Ms. Nagy and described, I mean, reviewed and considered by all the personnel involved.

A. The suspension letter which I issued with respect -- I don't have a copy of it here, so I can't comment.

Could we please have it?

Q. I don't have the thing, myself.

A. Could I say something off the record?

(Off-the-record discussion.)

MS. SPOONER: Are we going to be able to come up with that letter?

MR. KELLOGG: I don't have it in front of me.

MS. SPOONER: I thought I had it.

MR. KELLOGG: Off the record.

(Off-the-record discussion.)

BY MR. KELLOGG:

Q. Mr. Videnieks, we have not been able to locate at the moment a copy of your suspension letter that we have been referring to here.

Do you have any present recollection as to whether or not the suspension letter that you testified about merely suspended portions of then pending vouchers, or whether it also suspended future, portions of future payments attributable to time sharing costs? Was this a notice that future payments on that issue would be suspended, as well?

A. My present recollection is that the letter, which I have not seen, dealt with the two vouchers in question, only.

Q. Is it your recollection that subsequent payments, or subsequent requests for payments were also suspended in the same manner as the ones that were submitted before this letter, the suspension letter that you are talking about?

A. Yes.

Q. Mr. Videnieks, just quickly I want to go back a question or two relating back to Mr. Rugh's May 6, '83 memo, which is Exhibit 31.

Did you ever have occasion to give a copy of this memorandum to anyone at INSLAW, and I am not talking about in discovery, but during the existence of the contract?

A. What does did I have occasion mean, did I give it or did I not give it to them?

Q. Yes, did you ever give it to them?

A. I don't recall.

Q. If you had given it to them, you would recall, wouldn't you?

A. I am not sure.

Q. Do you have any recollection --

A. I normally don't hand out internal memoranda.

Q. So presumably, you didn't give it to them; isn't that right?

A. I don't recall.

Q. Well, the memo and the whole issue was a response to the request or the notice or however you want to call it from Murray Hannon on April 8; isn't that right?

A. I do not understand your question.

Q. This memo, Exhibit 31, was prepared as a comment, commenting on the request that was made by Murray Hannon of April 8; isn't that right?

A. What was Murray Hannon's request of April 8, I would like to look at it.

MS. SPOONER: Look at Exhibit 30.

BY MR. KELLOGG:

Q. It's just the statement that the use of the time sharing was above the estimated levels --

A. His overrun proposal.

Q. Well, that is the government's characterization.

MS. SPOONER: Maybe it would help if you could refer to these by document numbers because he has probably a couple dozen exhibits in front of him.

MR. KELLOGG: Well, the April 8 memo is Exhibit 30, isn't it?

THE WITNESS: Yes, sir.

MS. SPOONER: Yes.

BY MR. KELLOGG:

Q. My question is this 31, which is Mr. Rugh's May 6 memo, that was his comments on Mr. Hannon's Exhibit 30 request, wasn't it?

A. No, sir, it was his technical analysis of that overrun proposal.

Q. Which proposal was made in Mr. Hannon's April 8 letter that is Exhibit 30; isn't that right?

A. Yes, sir.

Q. All right. Now, did you ever have occasion to discuss with Mr. Hannon the particulars of Mr. Rugh's technical analysis that is contained in this Exhibit 31?

A. I don't recall.

Q. Do you think it's likely that you did?

A. I don't recall.

Q. Did you ever write Mr. Hannon and ask him to address any of these issues that Mr. Rugh had identified here in his memo of May 6?

A. I don't recall.

Q. If you had, you would recall it, wouldn't you?

A. No, sir.

Q. You might have done that, sir?

A. I might have.

Q. But you don't recall doing it?

A. I don't recall, sir.

MS. SPOONER: Can we go off the record for a moment?

MR. KELLOGG: Sure.

MR. KELLOGG: Mark this as Exhibit 35.

(Deposition Exhibit 35 was marked for identification.)

(Recess.)

BY MR. KELLOGG:

Q. I asked the reporter before we recessed to mark as Exhibit 35 a memorandum dated, looks like September 1 of 1983, anyway, September something, 1983, from Mr. Rugh, to you.

(Witness examines document.)

A. Okay, I have scanned it.

BY MR. KELLOGG:

Q. Exhibit 35, is that a copy of a memorandum from Mr. Rugh to you, dated in September of 1983?

A. Yes, sir.

Q. Does that appear to be a follow-up to Mr. Rugh's earlier May 6, 1983, memo to you about the technical analysis of the time sharing costs on INSLAW's contract?

A. It refers to the May 6 memo.

Q. Would it be fair to call this a supplement to his earlier memo, some further thoughts that he's had on the matter, further analysis, if you will?

A. It appears to be that.

Q. Whereas his earlier memo had recommended that what seemed to be a reasonable figure for time sharing costs I believe was $17,500 a month, in this memo does he not indicate that a reasonable figure would be perhaps 50,000 a month?

A. I don't recall. Again, I don't want to go into comparison of these technical memoranda, the contents in them, because they were furnished to me for advice and to see whether your numbers are correct, I would have to go back to the other memoranda to see what the 17-5 pertained to.

Q. Do you have any recollection as you sit here that after giving you the first memo, the May 6 memo, which indicated the view as a technical matter that something in the range of $17,500 a month would be an appropriate cost --

A. For what?

Q. For the time sharing computer center costs.

A. I would have to review it if the 17-5 was totally, or to what extent it was for time sharing costs.

Q. In any event, no question that Mr. Rugh's earlier memo of May 6 mentioned the figure of $17,500 a month, does it not?

A. Which page?

Q. Yes, it's in almost the last line of the last page, and it's not in numbers, it's written out -- no, I take that back.

MS. SPOONER: Mr. Kellogg, I think it's on page 3, paragraph numbered 5. I think it may be repeated elsewhere, too.

MR. KELLOGG: Yes, you are right.

BY MR. KELLOGG:

Q. Do you see that there?

A. Yes, sir.

Q. The sum of the four costs described above is $17,500 a month?

A. Yes, sir.

Q. Let me ask you this, do you recall at any time after May 6, 1983, getting any information from Mr. Rugh either in the form of this memo, Exhibit 35, or any other information from him, revising the figures that he had set forth in his earlier May 6 memo?

A. No, I don't recall.

Q. You have no recollection of his ever giving you any revision of the numbers in that earlier memo?

A. I have no current recollection.

Q. Mr. Videnieks, this time sharing computer center costs dispute, was that ever resolved, sir, before INSLAW went into bankruptcy?

A. What do you mean by resolved?

Q. Well, was the dispute between the parties, between the government on the one hand and INSLAW on the other, about whether INSLAW's time sharing computer center costs that they claimed, whether those were appropriate and proper or not, was that ever resolved before they went into bankruptcy?

A. I issued a final decision. The matters in front of the board, Department of Transportation Board of Contract Appeals.

Q. All right.

A. When one issues a final decision, it's a final decision.

Q. When roughly did you issue a final decision on that issue, do you recall?

A. I issued four final decisions under this contract.

Q. On this issue, I am talking about.

A. This issue may have been contained in several or one or all, I don't remember specifically in which of those final decisions included this specific issue.

Q. All right. But it's fair to say, isn't it, that this question, among others, that is, the time sharing computer center cost question, was still the subject of discussions between INSLAW and the department, right up past the time that they filed for bankruptcy; isn't that right?

Wasn't Ms. Sposato involved in negotiations that included that issue, among others?

A. Yes, but I was not a part of those negotiations, so therefore I am speculating by saying that -- I think she was involved in that.

Q. All right.

A. But I don't know to what detail, what the issues, specific detailed issues.

Q. All right. Did you ever become aware of a meeting on December 22, 1983, attended by Elliott Richardson, Mr. Hamilton, Mr. Sherzer, there may have been somebody else from INSLAW, I don't remember, and Mr. Rooney, who I believe then was the assistant attorney general in charge of the Justice Management Division, in an effort to resolve both the computer time sharing cost issue and a separate issue involving the word processor portion of the contract, the delay and the issues that arose from that, did you ever learn of a meeting of that sort being held on that date?

A. I don't remember dates that well.

Q. Did you ever hear that such a meeting was held, whatever date it was?

A. Again, I cannot be specific with respect to the individuals attending.

I do know that Richardson has met more than once with DoJ officials.

Q. Did you ever hear of Richardson meeting with Rooney, specifically?

A. I was at one of those meetings, Rooney wasn't there. But I really can't comment specifically as to who was where when. I know there were meetings.

Q. But my question is, did you ever hear from any source that Elliott Richardson and Mr. Hamilton met with Mr. Rooney regarding those questions, the time sharing question and the word processor question?

A. Ever?

Q. Yes, ever. Did you ever hear that they met on those issues?

A. Again, I cannot answer you with accuracy from my recollection that with respect to the attendees.

Q. Specifically all I am concerned about specifically is those three people, Hamilton --

A. I do not recollect.

Q. All right. In any event, did you have occasion to attend a meeting of the PROMIS oversight committee on December 29, 1983?

A. Again, I cannot be specific with respect to dates. I personally have not ever been in front of the oversight committee as in its full capacity, full standing. I may have met with some individuals who serve on that committee individually.

Q. All right.

A. I have never been called before it.

Q. Who of the people on the committee do you recall ever meeting --

A. I don't even know who is on it, who was on it. I assume that Bill Tyson may have been on it.

Q. Yes, I believe he was.

A. And I have met Bill Tyson.

Q. I am sure you have met and discussed parts of this with Bill Tyson.

A. No, sir.

Q. You have not?

A. Tyson is a high level government official, and I did not -- he may have called me during the three or four-year period once or twice, but I don't recollect, called me to attend, to come to his office or something where I may have met there with other people. I don't recall meeting with the guy.

Q. Did it ever come to your attention from any source of any kind that the PROMIS oversight committee did meet on December 29, 1983, and that at that meeting they determined and directed that proceedings be commenced to terminate the word processing portion of the INSLAW contract for default, did that ever come to your attention?

A. No, sir.

Q. No one ever told you that the committee had made that decision on that date?

A. To the best of my current recollection, no.

Q. Well, during this period of, say, the last half of 1983, was it an issue that you were considering, or that ever came up for your consideration, whether or not the word processing part of the INSLAW contract should be terminated either for default or for convenience?

A. It may have come under my consideration. I think that is the time period when -- strike that.

Q. I take it whatever the time period was, at some point that issue certainly came under your consideration, did it not?

A. Yes, because I issued the notice of termination.

Q. Eventually, you did issue the notice terminating the word processing portion of the contract for convenience; isn't that correct?

A. Yes, sir.

Q. Not for default, but for convenience?

A. Yes, sir.

Q. As a matter of fact, initially you were considering terminating it for default, and then eventually decided to terminate not for default, but for convenience; is that correct?

A. Yes, sir.

Q. Now, who participated in the decision-making process on that question?

A. What question?

Q. The question of whether to terminate the word processing portion of the contract and, if so, on what grounds.

A. EOUSA and JMD.

Q. All right.

A. As far as I know.

Q. With respect to EOUSA, did Mr. Mike Snyder participate in discussions regarding that?

A. With me, yes.

Q. Did Mr. Jack Rugh participate in discussions regarding that subject?

A. With me, yes.

Q. Did Mr. Brewer participate in discussions with you regarding that?

A. Yes.

Q. And did Mr. Snyder express an opinion as to whether or not he felt that the word processing portion of the contract should be terminated for default?

A. I believe he did.

Q. And what was that opinion?

A. I think -- I think EOUSA submitted a memorandum originally requesting termination for default, but that is the best of my recollection and I think Mike may have been instrumental in preparing that memorandum.

Q. All right. Do you recall whether Mr. Brewer approved that memorandum, or was that strictly from Mr. Snyder or Mr. Rugh?

A. I don't recall who signed it or what signatures were on it.

Q. In any of your discussions that you had on the subject, did Mr. Rugh indicate what his view was about whether there should be termination for default of the word processor part of the contract?

A. I don't recall specific discussions with specific individuals.

However, Mr. Rugh was aware of the problems in the word processing implementation area.

Q. Do you recall what his view was, whether it should be terminated or not?

A. Since 20 months into the contract there was not one successful word processing site implementation, I believe that all concerned DoJ officials felt partial termination of the contract was proper.

Q. That would include Mr. Brewer, as well as Mr. Rugh?

A. I think so, yes.

Q. As a matter of fact, it also included other people from the JMD, besides yourself, is that right?

A. I believe at that time Bill Snider was still on board. If so, he would have been involved, personnel from his office, my supervision.

Q. In any event would it be your recollection that this decision was essentially unanimous amongst all the participants at the department who --

A. The decision was mine.

Q. Well, I understand it was yours.

A. Singular.

Q. I understand it was yours to make and you did make it. But were the views of everyone who participated in giving you input on the question, were they essentially unanimous, that this thing should be terminated?

A. Terminated.

Q. Yes.

A. With respect to termination, I don't want to be as specific as unanimous. I don't recall specifically any objections.

Q. Do you recall anyone voiceing any objections to terminating on the ground of default, as opposed to convenience?

A. I recall receiving an advisory memorandum from counsel.

Q. This would be Mr. Bill Snider?

A. Yes.

Q. All right.

A. Discussing the pros and cons. It was a one-page memorandum, I believe, the pros and cons of terminating for default or for convenience.

Q. Was that memo, did that weigh in your consideration in deciding to terminate for convenience, as opposed to default, Mr. Snider's memo?

A. Yes, sir.

Q. You decided to terminate for convenience instead of default?

A. Based upon that memorandum and other considerations.

Q. All right. But you don't recall anyone else involved in giving you input voiceing the view that termination should be based on convenience, as opposed to default?

A. The decision was completely mine. However -- since I signed the document. However, management was informed. So -- I received no specific directions to do one or the other to the best of my recollection.

However, management was informed and in fact saw the two respective notices of termination, one for D, another for C.

(Off-the-record discussion.)

THE WITNESS: I would just mention I did prepare a notice of termination for default and notice of termination for convenience, because management expressed interest to see the wording.

I don't recall specific direction to proceed one way or another. My action was based primarily on legal advice.

BY MR. KELLOGG:

Q. I don't want to get into the specifics of it, but do you recall what consideration that it was that caused you finally to determine to terminate for convenience, as opposed to default?

MS. SPOONER: At this point on the ground of attorney-client privilege I want to caution the witness not to indicate the contents of the memo from Mr. Snider.

MR. KELLOGG: Fair enough.

A. If I cannot reveal the contents of that memorandum, I can't answer the question.

BY MR. KELLOGG:

Q. All right, so that to your --

A. Is that memo around here or not?

Q. I don't think it was revealed to us as they claim privilege and it may be inappropriate to claim it. In any event, to the best of your recollection, the principal basis for your decision to terminate for convenience, as opposed to default, was the legal advice that you got from Mr. Snider; is that correct?

A. Yes.

Q. Now, going back to this computer center time sharing cost issue, I recall you testified that after you got Mr. Rugh's original memo on the subject in May of '83, that you asked for some input from audit people, and they eventually gave you some, gave you some recommendations that you eventually followed regarding suspending a part of the payments.

Did audit have any further involvement in this time sharing cost issue, to your recollection?

A. Yes.

Q. Their involvement eventually developed into a full scale audit, didn't it?

A. Audit of what?

Q. The time sharing costs and the facts surrounding that issue.

A. Yes.

Q. As a matter of fact, that audit actually continued clear up until October of 1984, before you finally got an audit report on the subject; isn't that right?

A. I can't be specific with respect to dates.

Q. Well, it was sometime in the fall of '84 when you finally got an audit report, wasn't it?

A. Could I please see it to see if that is true or not?

Q. Before I get to.

MR. KELLOGG: Before I get to that, let me mark this as Exhibit 36, please.

(Deposition Exhibit 36 was marked for identification.)

(Witness examines document.)

A. I have read it.

BY MR. KELLOGG:

Q. Have you ever seen that memo before, Exhibit 36?

A. I think I have.

Q. This appears to be a memo dated August 24, 1984. It's directed from a Guy Zimmerman, director of the audit staff, to Kamal Rahal, director of the procurement and contract staff

Now I take it Mr. Rahal, he was your superior ; is that right?

A. Yes, sir.

Q. The memo refers to the fact that at this particular time, August of '84, the audit staff is "currently conducting a total cost audit of INSLAW, Inc., for the fiscal period October 1, '82, to September 30, '83."

Would this appear to be related to the audit that I asked you about earlier that continued into '84?

A. Generally, yes. But audit staff is very specific as to what they call a total cost audit, an audit. So I really cannot recollect what generated the total cost audit.

Q. Whatever may have generated it, it is clear in the second sentence there that at least this memo is raising a question regarding a computer center cost issue, is it not?

A. Raising a question?

Q. Yes, raising a question.

A. What question is that?

Q. If you will read the second sentence of the memo.

A. It's a statement.

Q. He's asking to know how to treat --

A. Second sentence of the memorandum?

Q. "We will soon be at a point where it will be essential to know how to treat the INSLAW computer center rate."

A. That is a declaratory statement.

Q. All right. But my point is, I guess, that he's talking about issues related to the computer center costs; isn't that right, in this memo?

A. Yes.

Q. He goes on in there to say, "Specifically, we need to know if the SRU rate is a 'provisional rate' or a rate 'fixed with carry forward provision.' If it is provisional, we will treat it in the same manner as the provisional overhead rate. If it is fixed, we cannot retroactively adjust it.

"In other words, the 'actual' SRU rate would be a moot point as far as fiscal year '83 is concerned an over/under allocation could only be 'carried forward' to subsequent fiscal years."

Now, you say you believe you did get a copy of this memorandum?

A. I believe so.

Q. Did Mr. Rahal ever ask for any comment or any input in providing a response to this memo?

A. From whom?

Q. From you.

A. Me. I don't recall.

Q. Do you recall assisting in preparing any response to this memo?

A. Not specifically, no, sir.

Q. Now, it would seem to me that the thrust of this first paragraph is that if this SRU for INSLAW had been a fixed with carry forward provision rate, as opposed to a provisional rate, then he's saying that it cannot be retroactively adjusted.

Do you think that is a fair interpretation of that, as you read it?

A. Which sentence are you talking about?

Q. Well, where he says, after he says, "Specifically we need to know if it is a provisional rate or a rate 'fixed with carry forward provision.'"

He goes on to say, "If it is provisional, we will treat it in the same manner as a provisional overhead rate. If it is fixed, we cannot retroactively adjust it. "

A. You are reading from the memorandum.

Q. Yes. You asked me what sentence I am reading from.

A. We have both read it.

Q. Okay, and my question to you is, am I correct in reading that that he is saying that if the rate is fixed with carry forward provision, it can't be adjusted retroactively?

Is that a fair interpretation of that?

A. I believe you are not interpreting, you are reading what the man wrote, and you appear to be reading it correctly.

(Pause.)

BY MR. KELLOGG:

Q. Going back to Exhibit 28, the negotiation agreement, we talked about earlier there on the front page under subparagraph C, under computer center, INSLAW's computer center rate for fiscal year '83 would appear to be labeled fixed with carry forward provision, wouldn't it?

A. Which is fiscal year '83?

Q. 10-1-83 to 9-30-83, the bottom line.

A. The words to the left-hand side of that line read "Fixed with carry forward provision."

Q. All right. Do you have any reason to believe that this term that you just read is not the item that this memo, Exhibit 36, is referring to?

In other words, do you have any reason to believe that Mr. Zimmerman in this memo is referring to anything other than this --

A. I have no reason to believe that he is referring specifically to these words on this page on this particular document, unless you can point it out to me.

Q. Do you have any reason to believe he is referring to anything else?

A. He may be referring to the concept of -- as I testified earlier, this document covers provisional rates, totally.

Q. All right.

A. As they pertain to my contract.

MR. KELLOGG: Mark this as Exhibit 37.

(Deposition Exhibit 37 was marked for identification.)

BY MR. KELLOGG:

Q. Take a look at that, please, what is marked as Exhibit 37.

(Witness examines document.)

A. I have looked at it.

BY MR. KELLOGG:

Q. Does that Exhibit 37 appear to be a copy of the final audit report regarding the computer center cost issues?

A. No, sir.

Q. Whether it's final or not, does --

A. It's what it says it is in the title, subject area of the memorandum.

Q. Well, it is a report to you, isn't it, of an audit of the computer center costs and charging system methodology of INSLAW, Inc., for the fiscal year ending September 30, 1983?

A. Yes, sir.

Q. All right. And as a matter of fact, this is the audit that was ultimately generated by the questions which arose from INSLAW's notification that the computer center costs were going to be above what was estimated back in April of '83; isn't that right?

A. No, sir.

Q. What was there that caused this audit to be done other than matters that resulted from INSLAW's April, '83 notification?

A. I believe it was an annual report. I believe the audit staff audits contracts, significant contracts by fiscal year.

Q. But this isn't an audit --

A. I mean the cost reimbursement contracts require audit support and this is typical of audit support.

Q. I understand that, sir, but this is not an audit of the whole contract, this is just an audit of the computer center costs?

A. Yes, sir.

Q. Isn't that right?

A. For that fiscal year.

Q. For that fiscal year. That was the fiscal year that you were concerned with that was brought to your attention in Mr. Hannon's April 8, 1983, letter, wasn't it, fiscal year 1983?

A. The request for recognition of that overrun in Mr. Hannon's letter may have fallen in fiscal year 1983.

Q. All right, and so that this audit, which relates to INSLAW's computer center costs for that fiscal year, that certainly would be an outgrowth of the issue raised by Mr. Hannon's letter; isn't that right?

A. What is unclear to me, and I have not reviewed this report again to refresh my memory, is whether this report is contract-specific or a total cost audit. If you wish, I could take that time to review it.

Q. I don't want you to take, have to read it line by line. If there is someplace quickly that you can look by recollection and see to answer that, yes, go ahead.

(Pause.)

A. Okay, under the scope, section 1 of this audit report, I don't see reference to a contract number. Similarly, I do not see on the first page of the report, reference to any contract number.

When the report speaks to over charge, at this point in time I cannot comment with respect to your questions as to what the over charge pertains to, the contract or all government business or what.

Q. Except that --

A. Without reviewing this thing.

Q. Except that as we said earlier, the negotiation agreement that fixes the SRU rate --

A. Is government-wide.

Q. Is government-wide and would apply to all of INSLAW's contracts, correct?

A. Subject to the applicable regulations and discretionary action by the cognizant contracting officer on each contract.

Q. All right. But to the extent that as a result of Mr. Hannon's letter of April of '83, that raised issues regarding the proper calculation of INSLAW's computer center costs that would inevitably get into questions of the proper

SRU rate, which in turn relates possibly to all of INSLAW's government contracts; isn't that right?

A. I don't want to speculate, sir. I would like to, before I give you answers, I would like to find them in this report.

Q. When you testified that the SRU rate fixed by negotiation agreement would be applicable to all government contracts with INSLAW, subject to applicable regulation and certain discretionary action, do you mean by that, sir, that you would have the discretion to change the SRU rate in a given situation?

A. No, sir.

Q. All right, that answers my question. Well, I want to finish this up.

Is it your testimony that this audit report, Exhibit 37, may be something that resulted from Mr. Hannon's notification back in April of '83, or it may not, you just can't tell?

A. I have received several advisory reports from the audit staff during the administration of the contract that we are discussing. Mr. Hannon's overrun proposal could very well have played a role with respect to this particular report.

Q. All right, that's fine.

(Pause.)

BY MR. KELLOGG:

Q. Mr. Videnieks, I asked you, I believe, earlier whether or not Ms. Sposato at some point, I believe commencing in 1984 and continuing into the time after INSLAW filed for bankruptcy, whether she had any role in discussions with INSLAW people trying to resolve these various disputes, and I believe you testified you thought that she did, but you weren't personally involved; is that correct?

A. I was not a part of that particular negotiation team. At that time the contract was in litigation, as opposed to administration, and Janice Sposato was, I believe, in charge of the team participating in those litigation or prelitigation, I am really not -- cannot comment on what the nature of those negotiations were, but she was the head of those negotiations.

Q. While she may have been the head of it, your testimony is that you, yourself, were not involved in --

A. As I said, sir, I was not part of that team. I was called from time to time to provide some information.

Q. All right. In the course of whatever information, if any, you may have learned as a result of the discussions that Ms. Sposato and her team participated in, did it ever come to your attention that Ms. Sposato had learned that, in fact, INSLAW had something like 17 people whose work was actually devoted to the operation of this computer center?

A. I don't specifically recall that number.

Q. Do you ever recall learning that there were a number of INSLAW employees that Ms. Sposato had learned that there were a number of INSLAW employees who actually had worked on the computer center and related services, and that the number was significantly above the three that Mr. Rugh had mentioned in his May, '83, memo? Do you ever remember anybody telling you that?

A. I don't specifically recall now whether anyone told me anything of that sort.

Q. Generally you don't recall ever hearing any such thing as that from anybody?

A. I don't really recall at this point.

Q. Was your advice, your participation, your input, solicited by anybody on Ms. Sposato's team at various times in these negotiations that she held?

A. My advice, I would say, generally, no, to the best of my recollection.

Q. How about your input?

A. Factual information from the contract file, from time to time, yes.

Q. At some point, I believe Ms. Sposato was involved in making judgments about the government's assertion of a counterclaim in the government contract appeals case in which INSLAW had claimed, I guess it was an appeal from your one or more of your final decisions.

Do you recall any input being sought from you as regards the preparation of a counterclaim in the contract appeals case?

A. I signed the final decisions containing the counterclaim dollar amounts.

Q. Do you recall roughly what those counterclaim dollar amounts were?

A. No, I would have to look at each one of those four final decisions. They covered several cost areas, to see what they were.

Q. But the total counterclaim asserted was substantially more than INSLAW was claiming was owed them by the government, wasn't it?

A. I don't know.

Q. It could have been, couldn't it?

A. Let's look at the decisions.

Q. You don't recall as you sit there whether or not it was more than what INSLAW was claiming?

A. I don't specifically recall right now. I would like to examine those decisions and see what those specific dollar amounts were before I testify.

Q. All right. In any event, recognizing that you signed them, who prepared the documents asserting the counterclaim that you signed?

A. I did.

Q. In preparing them, did you get any input from Ms. Sposato?

A. Very little, if any.

Q. Did you get any input from anybody in the executive office?

A. I received their concurrence but not necessarily input, because we dealt with historical data.

Q. Do you recall soliciting any input from anybody that was important to you before you made your decision as to asserting the counterclaim?

A. As I stated before, the final decisions were based upon historical data, most of any supporting information or documentation that I needed was already in the contract file, the final decisions, to the best of my knowledge now, were concurred to by counsel and ECUSA.

Q. Do you recall having any discussions with Mr. Rugh about this issue of asserting a counterclaim before you actually did it?

A. Which counterclaim are you talking about?

Q. Any of them.

A. I can't give you that kind of an answer. There were four final points that were -- as well as the counterclaim, that were issued over a period of time, maybe a year, maybe two years.

Again, I am speaking to the best of my recollection with respect to those time periods.

Q. You are saying you don't have any specific recollection of talking to Mr. Rugh about asserting any of those counterclaims?

A. I don't specifically recall that.

Q. Do you ever remember Mr. Rugh advocating that you should file a counterclaim on any of these final decisions?

A. No.

Q. Do you ever remember Mr. Mike Snyder ever advocating or recommending that you should file a counterclaim on any of these final decisions?

A. Not specifically, sir.

MS. SPOONER: Do you really mean to ask this witness if he should file a counterclaim?

MR. KELLOGG: No, I thought my question was does he recall these particular people in the executive office ever advocating to him that he, the contracting officer, should a certain a counterclaim.

MS. SPOONER: In the board proceedings?

MR. KELLOGG: I take it he did it in his final decision or in connection with his final decision.

MS. SPOONER: We just have a terminology problem. But if you mean that he should issue a final decision, is that what I understand your question to be?

MR. KELLOGG: My problem obviously is, I don't understand the intricacies of the process.

Off the record a minute.

(Off-the-record discussion.)

MR. KELLOGG: Let's go on the record.

BY MR. KELLOGG:

Q. Mr. Videnieks, maybe I have confused the issue here unwittingly. But I thought I recalled you testifying that you, at some point, prepared and signed counterclaims with respect to some or all of the final decisions that you had made in this contract; is that correct?

A. No, it's not correct.

Q. Did I misunderstand you?

A. What's correct is I signed and prepared four final decisions.

Q. All right.

A. In which one or more of those decisions a counterclaim was included in one or more cost categories.

Q. All right. So with respect to that that you just testified you did, my question is, do you recall Mr. Rugh ever advocating or recommending to you that you should include in any of those final decisions a counterclaim on particular cost categories?

A. I don't recall, sir.

Q. Do you recall Mr. Brewer ever advocating or recommending that you should a certain a counterclaim in a particular cost category in any of your final decisions?

A. No, sir.

Q. You are pretty sure Mr. Brewer did not recommend that to you or advocate that to you?

A. Pretty sure. I don't think he was involved in the process. He may have been informed about it, but not involved in the process.

(Pause.)

BY MR. KELLOGG:

Q. Do you, as you sit here today, recall whether any of your final decisions which contained one of these counterclaims, do you recall whether any of those were asserted and issued after INSLAW filed its bankruptcy petition?

A. I believe one or more of those four final decisions was dated in '86.

Q. All right. And do I recall correctly that there was some testimony either from you or from Mr. Miller of the trustee's office that you had mentioned to Mr. Miller the possibility that the government would a certain a counterclaim on any of these contract issues?

A. I don't recall, but you'd have to refresh my memory. I talked with Mr. Miller. I don't recall right now what the discussions -- whether the discussions involved my final decisions or not.

Q. Without your deposition transcript in front of me, I can't remember, myself. But in any event --

A. I remember questions in that area being asked in the first deposition that was taken from me.

Q. In any event as you sit here, you don't recall whether you would have mentioned anything about that to Mr. Miller or not?

A. I may have mentioned it, but I can't recall what I mentioned to him.

Q. Do you recall at some point in the Sposato negotiations, do you recall learning that Ms. Sposato and the government team had determined to make an offer to INSLAW to settle the whole matter with a payment by INSLAW to the government of $60,000?

Do you recall learning that such an offer was made by Ms. Sposato?

A. I recall learning about settlement offers by either side. I don't recall the specifics. There may have been several.

That dollar amount does not particularly jump out at me. I am not saying that I did not learn about any offer, but I don't specifically recall.

MR. KELLOGG: Mark this as Exhibit 38.

(Deposition Exhibit 38 was marked for identification.)

(Witness examines document.)

MS. SPOONER: Do I have a copy of that?

MR. KELLOGG: You should.

MS. SPOONER: 1985?

MR. KELLOGG: Yes, it should be about the last one.

MS. SPOONER: I have it. Thank you.

A. I have read my memorandum.

BY MR. KELLOGG:

Q. Is this a copy of a memo that you wrote to Janice Sposato, dated October 21, 1985?

A. Yes, sir.

Q. In that memo do you indicate to her that you disagree with the negotiating team's offer that INSLAW pay $134,526 as the total additional computer center costs?

A. That's what the memorandum says I think, yes.

Q. Do you indicate that you also disagree with the team's stated overall objective for negotiation of achieving a wash of all claims as against INSLAW's claims?

A. That is what the memorandum states.

Q. Do I take it correctly that, in your view, the negotiation team should have sought to recover additional monies from INSLAW and they should not have tried to achieve an objective of just walking out with neither side paying the other any money? You disagreed with such an approach?

A. I state so in this memorandum that I disagree with such an approach.

Q. Well, do you recall taking that position, sir?

A. Yes.

Q. Before you wrote this memo, I notice that you sent a copy to Mr. Brewer, Mr. Rugh, Mr. Mike Snyder and Mr. Zazzaro.

Did you have any discussions with Mr. Brewer about this subject before you wrote the memo, sir?

A. I don't specifically recall.

Q. Do you think it's likely you had any discussions with him?

A. It's more likely that I spoke with Mike Snyder, the audit staff and Jack Rugh on that matter before I would have spoken to Brewer. But I don't rule out the possibility that I spoke with him.

Q. All right. Whoever you may have spoken with, do you recall anybody from the executive office expressing any views to you on this issue, that is, whether the negotiation team's positions, whether they agreed or disagreed with the negotiation team's positions?

A. I don't recall.

Q. Do you think it's possible that Mr. Rugh or Mr. Snyder would have expressed any views to you on this subject, whether they agreed or disagreed?

A. It's possible, yes.

Q. As you sit here today, do you recall either one of them ever voicing any view on this question to you; do you recall them doing that?

A. Who?

Q. Either Rugh or Snyder, Mike Snyder.

A. Not specifically, no.

Q. Do you think it's likely you had any discussions with him?

A. It's more likely that I spoke with Mike Snyder, the audit staff and Jack Rugh on that matter before I would have spoken to Brewer. But I don't rule out the possibility that I spoke with him.

Q. All right. Whoever you may have spoken with, do you recall anybody from the executive office expressing any views to you on this issue, that is, whether the negotiation team's positions, whether they agreed or disagreed with the negotiation team's positions?

A. I don't recall.

Q. Do you think it's possible that Mr. Rugh or Mr. Snyder would have expressed any views to you on this subject, whether they agreed or disagreed?

A. It's possible, yes.

Q. As you sit here today, do you recall either one of them ever voicing any view on this question to you; do you recall them doing that?

A. Who?

Q. Either Rugh or Snyder, Mike Snyder.

A. Not specifically, no.

Q. Do you recall generally anybody from the executive office expressing any view --

A. To the best of my recollection at this point, I believe I generally discussed this subject with all or some of the people who received copies of this memorandum, as indicated at the bottom.

Q. As you sit here today, you don't have any recollection of any of those people who received copies having expressed opposition to the views that you set forth here in this memo, do you?

A. No, sir, those are my views, my personal views on the matter as the cognizant contracting officer.

Q. I understand that they are your views, Mr. Videnieks.

But the question I asked you was, do you recall any of the people who were copied on your memo ever expressing any objections to these views in any discussions that you may have had with them?

A. No, sir, and I don't think they were in a position to.

Q. I have got a few, maybe more than a few, kind of a laundry list of things that I want to try to conclude with here.

Mr. Videnieks, did you ever receive any contact at any point from the time you started working on this INSLAW, the RFP that preceded this contract, up until today, did you ever receive any contact from anyone outside of the Justice Department in any other government agency about this contract or about INSLAW?

A. Was your question, outside, including both government and nongovernment organizations?

Q. No. First the question is did you ever get contacted about INSLAW or about this contract by anybody outside the Department of Justice?

A. Yes, sir.

Q. Who?

A. The Department of Transportation Board of Contract Appeals' lawyer to whom I sent -- There were two lawyers who received copies of my -- of the appeal file.

Q. But these would be lawyers that essentially would be representing the department's interest in this administrative appeal, is that --

A. Yes, sir.

Q. Is that correct?

I contact personnel in the audit staff, discuss it with them.

Q. Do you ask them to perform some type of an audit, or to give some type of analysis on their part to help you make a decision here?

A. I don't recall specific events, I can't identify them specifically, what happened after this point. But I do recall that as a result of INSLAW's overrun notification, the government began investigating or analyzing the data center costs.

Q. And as you have testified, you contacted the people in audit to get some further assistance on this question; isn't that right?

A. Yes.

Q. In the course of this process of essentially trying to decide what to do about this question, did you have any discussions with Mr. Brewer?

A. I can't remember specific discussions. That does not mean there weren't any.

MR. KELLOGG: Mark this as Exhibit 32.

(Deposition Exhibit 32 was marked for identification.)

BY MR. KELLOGG:

Q. Take a look at Exhibit 32, please.

(Witness examines document.)

BY MR. KELLOGG:

Q. This appears to be --

A. I am still reading, sir.

Q. Sure.

A. May I finish it, please?

Q. All right, go ahead.

(Pause.)

A. I have read it.

BY MR. KELLOGG:

Q. This appears to be a memo to the file from Mr. Rugh, dated May 18, 1983, reciting a discussion between yourself, Mr. Whiteley, who I take it is an audit person, Al Gibson and himself, regarding the issues raised in his memorandum; is that correct?

A. Yes, sir.

Q. Later on in the memo he recites that his memorandum suggests that a reasonable charge for time sharing should not exceed $17,500 a month and that the latest voucher contained a monthly charge of $106,000.

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. It contains a charge of $64,000 for time sharing.

And it proceeds to indicate in the last paragraph that the group briefed Brick Brewer and Mike Snyder on the issues.

Do you recall this meeting that was described here in this memorandum?

A. The group briefing, or --

Q. No, I am speaking first of the meeting with yourself, Mr. Whiteley, Gibson and Mr. Pugh.

A. Not specifically, no, sir.

Q. Do you recall a briefing by those persons, including yourself, of Mr. Brewer and Mr. Snider on this issue?

A. I don't recall.

MR. KELLOGG: Mark this as Exhibit 33, please.

(Deposition Exhibit 33 was marked for identification.)

(Witness examines document.)

A. This refreshes my memory with respect to

Exhibit 32.

BY MR. KELLOGG:

Q. Speaking now of 33, does that appear to be a copy of three pages of handwritten notes of a memo you prepared to the file, dated May 18 of '83, regarding a meeting that date, apparently the same meeting referred to in Exhibit 32, Mr. Rugh's memo?

A. Yes, sir.

Q. Does that refresh your recollection in terms of whether you or the group in your presence briefed Mr. Brewer about this question?

A. Yes, sir.

Q. Do you have any present recollection of any particular role that Mr. Brewer played, anything he may have contributed to this matter that was being discussed?

A. No, sir.

Q. You don't recall any particular statements about the issue that he made?

A. I don't recall.

Q. You don't recall any particular directives that he may have given as to how he wanted this thing to be handled?

A. I don't recall.

Q. On the second page, about halfway through there, you have a sentence that begins, it looks like "voucher number 37 in the amount of 265," I believe it is 503 dollars, "was given to R. Whiteley for examination and recommendation of the amount to be withheld."

Is that what that says, sir?

A. Yes, sir.

Q. Would it be fair to conclude that that was at least one of the actions that the assembled group at this meeting took, namely, to give this then pending voucher to Mr. Whiteley and get his recommendation as to how much should be withheld?

A. The memorandum says that the voucher was given to Bob Whiteley. The timing, I can't speculate on.

Q. Well, may I take it that your memo would indicate that the voucher was given to him at or as a consequence of this meeting on May 18; isn't that right?

A. That's what the memorandum would appear to say.

Q. I take it, do you have any recollection of giving him voucher 37 and asking him to make a recommendation on it?

A. No, sir.

Q. In any event I take it there is no question that that in fact did occur?

A. Yes, sir.

Q. And eventually, Mr. Whiteley or someone in his organization made a recommendation to you about that issue, didn't they?

A. Eventually, I think so.

Q. As a matter of fact they recommended that you do withhold significant amounts from that voucher, as well as later vouchers; isn't that right?

A. I think so, yes.

MR. KELLOGG: Mark this as Exhibit 34, please.

(Deposition Exhibit 34 was marked for identification.)

(Witness examines document.)

A. I have read it.

BY MR. KELLOGG:

Q. Is that a copy of a memo that you received from the audit staff, dated May 24, 1983?

A. Yes, sir.

Q. Is this a response to the action that the group took on the May 18 meeting giving this voucher 37 to Mr. Whiteley in audit to be reviewed and make a recommendation about withholding?

A. I cannot correlate the amounts. The amounts appear to be different in this memorandum than they are in the prior two memos unless there have been additions, so should we work that out?

Q. Well, they appear to be, at least this Exhibit 34 refers, among other things, to voucher number 37, doesn't it?

A. Yes.

Q. That is the same voucher that is referred to in your handwritten notes, isn't it, that you gave to Mr. Whiteley?

A. Yes.

Q. So although I recognize there is --

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. As you read the memo, referring now to Exhibit 34, is this a recommendation that 58,198 be withheld from voucher 37?

A. It's a recommendation that I consider suspension.

Q. But in that amount on that voucher?

A. Yes, sir.

Q. All right. So I guess it's possible that your handwritten memo refers to the total that the voucher is for, 200 and some thousand?

A. I can't comment on it without further analysis.

Q. All right, I am just saying it's possible that the voucher claimed a total amount of well in excess of this and that this memo here, 34, is just speaking to how much they recommend that you consider suspending of the total.

A. I like to be specific with dollar amounts. If we could see the voucher --

Q. Well, I understand, and it's not important, I don't think, for purposes of this question how much the voucher was.

There is no question in your mind this Exhibit 34, whatever amount the voucher was, they are recommending to you that you consider suspending paying $58,198 on voucher 37; isn't that right?

A. Yes, sir.

Q. It's also clear they are recommending that you consider suspending paying $67,168 on voucher 39?

A. Yes, sir.

Q. Now it's also clear, isn't it, that the recommendation that I just recited there, that that is based on the questions raised and the information provided in Mr. Rugh's May 6, 1983, memo?

A. Yes, sir.

Q. When you gave the matter to audit or you made your request to audit that they give you some input on this and make a recommendation, did you give them any other information besides that contained in Mr. Rugh's memo?

A. I don't recall, but there were numerous telephone conversations and meetings, I imagine, concerning this question.

Q. I guess what I should confine my question to is that in terms of a technical analysis about what charges might or might not be appropriate under the contract for the time sharing costs, did you give them any information relating to that other than Mr. Rugh's May 6, '83, memo?

A. I don't recall.

Q. Do you recall having any other information on that technical analysis besides Mr. Rugh's memo?

A. I don't recall. There may have been other memoranda in existence.

Q. If there were, where would they have likely come from, from whom?

A. They could have also come from the office of information technology.

Q. Is that someplace that is outside of the executive office of the U.S. attorneys?

A. Justice Management Division, I am not sure whether there were any such memoranda at this time.

Q. Do you recall asking for any input from them on this question?

A. I don't recall.

Q. In any event, this Exhibit 34 would appear to indicate that the audit people's recommendation was based solely on Mr. Rugh's memo; isn't that right?

A. No.

Q. What would cause you to say that the memo, Exhibit 34, would indicate that they based their recommendation to you on anything other than Mr. Rugh's memo?

A. There is nothing in the memorandum to indicate that.

Q. There is nothing in the --

A. The original was solely. I don't know whether solely is the right word to use.

Q. All right, but the memo does indicate clearly that this recommendation is based on the information contained and the questions raised in Mr. Rugh's memo?

A. Yes, sir.

Q. It doesn't indicate that it's based on anything else?

A. That's what this particular memo seems to say.

Q. Just tell me what your recollection is, what transpired regarding this time sharing issue after you received this May 24 memo from the audit staff recommending that you consider suspending these specific amounts on these two vouchers?

A. I generally recollect seeking advice of counsel, further discussions with EOUSA personnel, with audit personnel, and then preparing and having reviewed alibi those respective offices which I just mentioned prior to issuance of such suspension letter to the contractor.

Q. So that if I understand you correctly, your recollection is that after you got this Exhibit 34 with the recommendation that you consider suspending, you had further discussions with people in the executive office for U.S. attorneys?

A. Yes, sir.

Q. Now, in those discussions, did Mr. Rugh participate in those discussions?

A. I don't specifically recall that.

Q. But I take it it's likely he would have, isn't it?

A. Yes, sir.

Q. It's also likely that Mr. Brewer would have participated in those discussions?

A. To the extent of his availability, yes, sir, if he were there.

Q. But you don't recall --

A. No, sir.

Q. -- him participating?

A. No, sir, I don't want to speculate.

Q. Generally, what position did Mr. Rugh, I mean what position generally did the executive office take about whether these payments should be suspended?

A. Yes, sir.

Q. I am not talking about. Apart from those people, did you ever get contacted by anyone else outside the Department of Justice about either INSLAW or this contract?

A. A journalist or reporter from a law review magazine requested contract documents under the Freedom of Information Act, I think. I may not have specifically handled that request or I may have. Or I may even be confusing contracts here.

Q. Would this be the National Law Journal?

A. It could be, it could be. And we processed that request through the freedom of information people.

Q. Do you recall getting a specific contact from a reporter about that?

A. I may be confusing contracts. It may not be this particular contract. But I think that a --

To answer your question, this may have been another situation. But really, without going through, I don't even know whether I have records anymore.

Q. Apart from that contact, if that related to this contract, do you recall any other contact by anyone outside the Department of Justice, either about this contract or about INSLAW?

A. Once I think I received a telephone call from an individual who had questions in a financial area, I think, with this contract. I referred that call to the audit staff.

I don't really remember who the individual was or the nature, more specific nature of the questions, or when it took place, within the year. I can't even pin down the year.

Q. Did this person identify himself?

A. May have. Sure he did, of course.

Q. It was a man?

A. I believe it was a man.

Q. And did he indicate that he was representing INSLAW in any way?

A. No, it was, I believe he did not represent INSLAW but he had a question concerning INSLAW. It was a question completely out of my area.

I don't remember, even though I administered the contract, it was a financially oriented question and I referred the man to the audit staff.

Q. Was this the type of question that someone would be asking if they were considering trying to buy either the whole company or some of INSLAW's products?

A. Could have been, but I don't recall.

Q. Do you remember who in the audit staff that you referred this person to, sir?

A. No, sir.

Q. Do you recall whether this was before or after INSLAW filed its Chapter 11 petition in bankruptcy?

A. I don't recall.

Q. Do you think it was during the time that the contract was still in effect, or was it, had it run its course?

A. Again, I don't recall.

Q. Other than this incident and the reporter, do you recall getting any other contacts from anybody outside the Department of Justice about INSLAW or about the contract?

A. I don't recall specifically.

Q. Do you think you could have?

A. I could have, but I really don't recall.

Q. Do you recall ever receiving any contact from any customers or creditors of INSLAW?

A. I don't recall, the gentleman we referred to a short while ago may have represented either a customer or creditor, but I don't really recall.

Q. I am excluding that call in my question. Do you ever recall getting a call or contact of any kind from anybody at IBM?

A. Not specifically, no.

Q. Do you ever recall getting a contact or telephone call from anybody at AT&T?

A. Not specifically, no.

Q. Do you ever recall getting any contact or telephone call from anybody at Wang?

A. No, sir.

Q. Do you recall ever learning from any source that Mr. Rugh had had any contact from any person outside the Department of Justice regarding INSLAW or the contract?

A. I believe EOUSA at one time or another spoke with a state government, but I don't recall specifics.

Q. How did you learn of that fact?

A. I can't recall.

Q. Do you think it would have been Mr. Rugh or Mr.

Mike Snyder that told you that?

A. I can't recall, sir.

Q. Do you have any recollection as to what time period the contact by the executive office with a state government might have been?

A. No, sir.

Q. Do you think it would have been during the time that the contract was in effect?

A. I don't recall.

Q. Do you remember anything about what information was communicated to the state government?

A. No, sir.

Q. Do you ever recall Mr. Rugh --

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. Apart from that contact with the state government, if it did occur, did you ever learn from any source that Mr. Rugh had had any contact with anyone else from outside the Department of Justice regarding INSLAW or this contract?

A. During the life of the contract, now my memory -- I, Mike Snyder and Jack Rugh did communicate with respect to contract administration matters, basically government-furnished equipment, with the respective representatives from the hardware contractors.

Q. That would be, I believe --

A. Schedule -- PRIME and Lanier, basically scheduling deliveries of hardware and this type of thing.

Q. Do you ever recall discussing with either PRIME or Lanier personnel anything about INSLAW's performance under the contract?

A. Not specifically, no.

Q. Do you --

A. It may have occurred. The area of scheduling, itself, is related to the performance, performance against time. So in that respect as it pertains to government delivery of government-furnished equipment and schedules contained in the respective three contracts and how they interrelate, that is a performance related area.

Q. Did you ever learn from any source that Mr. Brewer had any contact either with PRIME or with Lanier on this, about the contract or about INSLAW?

A. The team of cognizant personnel, including me, Mike Snyder, at one time, Carol Sloan, we dealt with the contractor representatives from the particular contracts involved and administered those contracts. At times there were overlapping areas in those contracts.

Q. Well, my question is, do you know or did you ever learn from any source that Mr. Brewer had any contact with anybody from either PRIME or Lanier about INSLAW?

A. I have seen people from PRIME and Lanier meet with Mr. Brewer on business matters.

Q. Related to INSLAW?

A. No, I don't know what they talked about.

Q. Did you ever learn from any source that Mr. Brewer had ever made any statements critical of INSLAW to anyone outside the Department of Justice?

A. No, sir.

Q. Did you ever learn that Mr. Rugh had ever made any statements critical of INSLAW to anyone outside the Department of Justice?

A. No, sir.

Q. Did you ever learn from any source that Mr. Mike Snyder had made any statements critical of INSLAW to anyone outside the Department of Justice?

A. No, sir.

MR. KELLOGG: Let's take about five minutes.

(Recess.)

MR. KELLOGG: Would you mark this as Exhibit 39, please.

(Deposition Exhibit 39 was marked for identification.)

(Witness examines document.)

BY MR. KELLOGG:

Q. Looking at Exhibit 39, Mr. Videnieks, speaking about the first page of it, this appears to be a copy of handwritten notes that you made on 5-9-83; is that correct?

A. Yes.

Q. I would like you if you would for the record to just read what you wrote there, starting with the date?

A. 5-9-83. Tell econ JR/MS/PV --

Q. Excuse me, just let me interject a second, if I could.

Where you have abbreviations in your memo, if you can recall now what they mean, if you would just state what they mean from your recollection, I would appreciate it.

A. Telephone conversation, Jack Rugh, slash, Mike

Snyder,slash, Pete Videnieks, regarding Harvey Sherzer's letter of 5-4-83. PROMIS software data rights. J R has revised -- I mean, Jack Rugh has revised letter --

Q. Do you think it could be reviewed letter?

A. Reviewed letter and feels contractor can't support claim of privately financed enhancements.

Q. Enhancement development, maybe?

A. Enhancement development. Jack Rugh has memo drafted evaluating letter. It will include three alternatives for discussion with Bill Snider.

1. Flat out denial of contractor's proposed method and government decision that contractor has failed to substantiate (Jack Rugh; --

Q. Does it say drastic, do you think?

A. Drastic)

2. Response that method is not acceptable and suggest acceptable method.

3. Response that contractor has not substantiated claim and ask them to substantiate-however they wish, i.e., don't agree to any method. We all were of the opinion that the government should not get locked into agreement as to how INSLAW proves their claim. Since they

made the claim, proof should be readily available.

Jack Rugh's memorandum will be done Wednesday and he will be back Friday. (-- looks like A L S. I don't know what that means.

Q. Doesn't it say B B, Brick Brewer?

A. I was looking at A L S, before that.

Q. Also.

A. Also B B, that would be Brick Brewer, has written letter regarding copyright; looks like -- looks like, my words, looks like Lanier, doesn't make any sense but that is what it looks like.

Q. Then is that your initial down at the bottom of the page?

A. Yes.

Q. All right.

A. I am not sure that word Lanier, I don't know what -- It could be Lanier; it could not be Lanier.

Q. I take it that it the memorandum you made of the telephone conversation between yourself, Mike Snyder and Mr. Rugh on May 9, 1983?

A. Yes, sir.

Q. Is it fair to conclude from that that your memo indicates that Mr. Rugh was indicating that there were three alternative possible responses to INSLAW's proposed methodology for proving the privately financed enhancements; is that correct?

A. No.

Q. Does your memo indicate that his memo would include three alternatives for discussion with Mr. Snider, Mr. Bill Snider?

A. Yes.

Q. One of those alternatives that was going to be in his memo for discussion with Mr. Snider was a response that the proposed method was not accepted able and to suggest an acceptable method; isn't that right?

A. That is what the memorandum says.

Q. Do you recall Mr. Rugh suggesting in this telephone call or mentioning in this telephone call what an acceptable method would be?

A. I don't recall, no, sir.

Q. But it's fair to conclude from this memo, isn't it, that he thought he would be able to put together an acceptable method?

A. No.

Q. That is not fair to conclude, sir?

A. Let's read it again, sir. Response that method is not acceptable and suggest acceptable method. If there is one. We planned to plan a meeting to discuss approaches not necessarily limited to these three. I don't recall the specific meeting.

Q. All right. But at the very least, at this point your memo would indicate that Mr. Rugh thought that it was at least possible that he could suggest an acceptable method at that time whether eventually he was able to do that or not?

A. No, sir, that is not what I read from that note. Explore.

Q. Where does it say explore?

A. Where does it say possible?

Q. It says one of the alternatives is suggest an acceptable method, right?

Reject the one they proposed and suggest an acceptable method. That is one of the alternatives he is going to lay out in his --

A. On the table for exploration.

Q. On the table for discussion.

A. As to feasibility.

Q. All right. Presumably he must have thought that he could suggest an acceptable method or he wouldn't have put that out as a possible alternative at that time, would he?

A. No.

Q. All right.

(Pause.)

MR. KELLOGG: Mark this as Exhibit 40.

(Deposition Exhibit 40 was marked for identification.)

(Witness examines document.)

A. I have read it.

BY MR. KELLOGG:

Q. Mr. Videnieks, does that appear to be a copy of a memorandum dated in September of '83 from Mr. Zazzaro of the audit staff to you about this computer center time sharing issue?

A. Regarding the computer center cost allowability issue as it pertains to the contract in question.

Q. This was, again, arising out of the issue that Mr. Rugh had addressed in his May 6, '83 memo, and again I believe in a supplemental memo in September of '83; isn't that right?

A. I would have to examine those memoranda to agree with the dates you mentioned.

Q. In any event, down in the first page there towards the bottom, Mr. Zazzaro makes a statement that it had been recommended that $50,000 a month be allowed for computer center time sharing costs, and he goes on to make the statement that there may be costs above the 50,000 that represent legitimate government obligations.

This is still on the first page and I'm paraphrasing. I don't have it in front of me.

Do you see what I am referring to there?

A. Yes, sir.

Q. Can you just read his words there when he talks about there may be something in excess of 50,000?

MS. SPOONER: Starting with the "accordingly"?

BY MR. KELLOGG:

Q. Yes.

A. "Accordingly, recommend that allowable billings for time share services should be limited to $50,000 per month.

"However, he offered that time share billings in excess of $50,000 a month may include bona fide obligations of the federal government."

Q. Do you recall this meeting that this memorandum speaks about here?

A. Vaguely.

Q. Do you recall Mr. Zazzaro raising a question about the fact that allowing $50,000 a month, that there might be some government obligation legitimately above that amount, do you remember him expressing that view?

A. I don't, because aren't these Jack Rugh's words?

Q. In other words, you think this is Zazzaro saying that Rugh is saying --

A. I think so, from the appearance of the memorandum, that could be the case.

Q. About that time did you suspend payments above $50,000 a month on the basis of this meeting and other meetings that you had?

A. I don't recall, sir. Each voucher received specific attention, each voucher is specifically annotated, reflecting the amount withheld or suspended or actually subtracted from the amount billed. It was done on a voucher by voucher basis.

Q. Do you recall as you sit there ever withholding an amount --

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. Do you ever recall suspending payment of all amounts in excess of $50,000 for computer time sharing costs on any particular voucher?

A. I would have to examine the specific vouchers. The amounts suspended in some cases were above $50,000.

Q. Maybe I didn't ask my question right, but as I read this memo, what this memo is saying, there was a recommendation to allow 50,000 a month for this cost and to suspend paying anything in addition to 50,000, anything above 50,000 a month. Is that correct --

A. I don't think that is what this memorandum, which -- I won't continue with that sentence.

I don't think that is what this memorandum says on page 2.

Q. How do you read it?

A. I will read it. "The PRIME individuals at the

September 9 meeting agreed to support the COTR's recommendation regarding the $50,000 monthly amount and invoke the contractual 60/40 relationship to the excess over $50,000 monthly to protect the government's 60 percent share of any overrun."

Q. So you would read that as being a recommendation that there be a suspension of payments beyond a level above 50,000?

A. Do you want me to read it again?

Q. No, I know what the words say, but you were at the meeting, I take it, and you know the issue and I don't.

A. The issue is accurately reflected here in that sentence which I just read.

Q. I understand that they are saying --

A. I can't say anything more than is written there.

Q. It's because you have no recollection --

A. No, I understand it and I cannot expand on it.

Q. Do you recall that particular meeting and what was decided there?

A. As I stated earlier, I generally recall it.

Q. Do you recall taking any action with respect to suspending computer center costs --

A. As I just stated I took action --

Q. Let me finish my question.

A. I took action on each voucher individually and suspended the required amounts.

Q. Do you read this memo, Exhibit 40, I believe it is, as recommending a particular suspension only with respect to specific, certain specific vouchers?

A. I read that memo as recommending a rationale for suspension of computer center costs from cost reimbursement vouchers at some given period of time.

Q. Do you ever recall making decisions to suspend parts of particular requested amounts for computer center costs based on this rationale recommended in the memo?

A. Yes, but I don't recall how many vouchers.

Q. All right. Have you ever heard of a case tracking system, the acronym for which is USACTS?

A. Yes, but that is about as much as I know about it.

Q. Do you understand it to be a case tracking system that works on word processing machines?

A. No. It could very well.

Q. You just don't know one way or the other?

A. I am not familiar. I have heard the acronym. It may very well be word processing orientated, but I don't know that much about it.

Q. Did you ever hear that this system with this acronym had been utilized by any of the U.S. attorneys offices?

A. I believe it was utilized in the field.

Q. Did you ever hear that in substance this case tracking system with that acronym was in reality a version of the word processing software that INSLAW had developed under the EOUSA pilot contract?

A. I don't recollect.

Q. You never recall hearing that?

A. I don't recall hearing that.

MS. SPOONER: Excuse me. May I hear the witness's second to last answer?

(The reporter read as directed.)

BY MR. KELLOGG:

Q. Mr. Videnieks, in February, 1984, INSLAW submitted a proposal after the termination of the word processing part of the contract to expand the number of computer based sites from what was in the existing contract at the time.

Do you recall that proposal?

A. To who did they submit it to?

Q. To you?

A. To me? I receive -- I recollect having received one or more unsolicited proposals.

Q. Well, this --

A. This may have been one.

Q. This proposal, I do believe, was referred to within the government generally as "an unsolicited proposal."

Now, ultimately, I believe you rejected this proposal; is that correct?

A. I'd like to see my letter to see whether I did or not.

Q. I don't have it in front of me. Do you recall?

A. I think I may have rejected it.

Q. All right. Assuming that you did reject it, do you recall any discussions with Mr. Brewer on that subject as to whether you should reject it or what his views were about it?

A. I don't recall discussions with him specifically, but I do recall exchanging memoranda with him.

Q. All right.

A. Asking the EOUSA to evaluate this proposal, and I recall receiving a written evaluation of that proposal. And based upon that evaluation, I issued my rejection notice.

Q. Is it fair to conclude from that that the EOUSA evaluation memo was negative on this proposal?

A. No.

Q. Did the EOUSA memorandum of evaluation recommend that you accept this proposal?

A. No.

Q. Did they recommend that you reject it?

A. I think they recommended that I reject it.

Q. Did you ever learn that that particular proposal was submitted as a result of a specific suggestion of the then deputy attorney general, Lowell Jensen, made to Donald Sandrelli, an INSLAW attorney at the time?

A. No, sir.

Q. Did you ever hear Mr. Jensen had told Mr. Sandrelli that he would look with favor on finding funds for such a proposal?

A. No, sir.

Q. Did you ever hear that Mr. Jensen told Mr. Sandrelli that he, Mr. Jensen, did not hold INSLAW responsible or he did not think they were at fault for the failure of the word processing portion of the contract?

A. I don't recall, sir.

Q. You would recall if you had ever heard that, wouldn't you?

A. It's possible.

Q. But you don't recall hearing that?

A. No, sir.

Q. Did you ever attend any meetings or briefings regarding PROMIS or INSLAW where Mr. Jensen was present?

A. No, sir, I don't recall.

Q. Did Mr. Brewer or any other department officials mention, in your presence, anything about any meetings that they may have had with Mr. Jensen about PROMIS or about INSLAW?

A. They may have, I don't recall specifically anyone mentioning meetings.

Q. If anyone had, do you think it would be someone in the executive office?

A. Either the executive office or JMD. Those are the two primary groups of people I dealt with.

Q. Did you ever receive any commendations, awards or bonuses for performance during your service as the contracting officer on the INSLAW contract?

A. General bonuses, the federal government has what's called a -- it's a merit system of sorts. If one gets a certain rating there is a cash award or a cash bonus, I guess private industry would refer to it as. And I think every year I have been there I received something.

Q. Is this what is described as the Senior Executive Service, sir?

A. I wish I were. The answer is no. I was -- no, sir.

Q. Do you recall in rough terms the amounts of any bonuses that you got during these years?

A. There are five levels of rating, or maybe four, and I received always the -- I think the first year I got the outstanding, the years after that it was one level before that and the amounts varied somewhere, I think this last year was like 1500 bucks.

See, I get confused what the percentage increase when they passed this general government -- it's somewhere in the area of a thousand dollars or less, something like that.

Q. Did you ever learn that Mr. Brewer ever got any cash bonuses or awards or commendations during the pendency of the INSLAW contract?

A. I very generally recollect that at one time in one year he was rated high, and may have received some award.

But I don't know, that is about all I know about it.

Q. Did Mr. Brewer ever tell you he had gotten any such award?

A. No.

Q. Did you ever hear that Mr. Rugh ever got any commendations or awards or cash bonuses, anything like that during the --

A. Not specifically, but I do know that Jack may have been rated outstanding one or more times during these years.

Q. It would have been Mr. Brewer primarily that was doing the rating on him, wasn't it?

A. Mr. Brewer would have been the rating official, yes.

Q. How about Mr. Mike Snyder, did you ever hear that he got any awards or cash bonuses?

A. No, sir.

Q. Or commendations or anything during this period?

A. No, sir.

Q. How about Carol Sloan?

A. I did not hear anything about her.

Q. Now, did you ever receive any contact with anyone from a company called SCT, Systems and Computer Technology, regarding INSLAW?

A. I don't recollect.

Q. Do you ever recall hearing that Mr. Brewer or Mr. Rugh ever received any contact or had any contact with anybody from that company?

A. I don't recollect.

Q. Did you ever have any contact with any person from PRC, Planning Research Corporation, about INSLAW?

A. I don't recall.

Q. Do you think you may have?

A. As I mentioned earlier, I received a call, I believe I testified, from an individual from outside the government. I am not excluding --

Q. All right.

A. -- anybody, any organization from being the source.

Q. Excluding that person, and I know you can't recall now what organization, if any, that person was from, but excluding that person who contacted you, do you have any other recollection of any contact either with anybody from Systems and Computer Technology, or anybody from Planning Research Corporation about INSLAW?

A. I am familiar with the second company by name, and I have dealt with them in the past with another -- within other agencies, but I don't recall.

Q. Do you ever recall any contact with a man by the name of Bruce Adams, I believe he is from California, about INSLAW.

A. Unless he is the reporter or the other individual, I don't -- the name does not ring a bell, let's put it that way.

MR. KELLOGG: Mr. Videnieks, that is all the questions that I have got.

MS. SPOONER: I have no questions.

(Whereupon, the deposition was concluded at 5:08 p.m.)